

LEGAL VACUUMS IN THE 1:1 INHERITANCE DISTRIBUTION IN INDONESIA: A GENDER EQUALITY AND JUSTICE PERSPECTIVE

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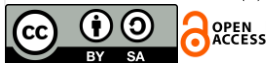
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Abstract : This article examines the legal vacuum in Indonesia's 1:1 inheritance distribution system, particularly regarding the division of inherited assets between male and female heirs within the framework of Islamic law. The provision in the Compilation of Islamic Law (KHI), which establishes a 2:1 ratio, presents challenges when juxtaposed with the principle of gender equality as guaranteed by the 1945 Constitution and international legal instruments such as CEDAW. This study adopts a normative juridical approach with conceptual and comparative methods. The primary data consist of statutory regulations, the KHI, and other legal instruments related to inheritance systems. The data are analyzed descriptively and analytically to assess written legal norms from the perspective of gender equality and justice. The findings indicate that inheritance distribution deeds issued by notaries, as well as judicial decisions granting voluntary equal distribution among heirs, lack standardization due to the absence of a national legal framework recognizing equal distribution as a normative legal principle. This gap results in disparities across jurisdictions and creates legal uncertainty for the public. Therefore, inheritance law reform is urgently needed to provide each community group with viable legal options, ensure the legal validity of family agreements in inheritance distribution, and accommodate principles of social justice that are responsive to contemporary developments.

Abstrak : Artikel ini mengkaji kekosongan hukum dalam sistem pembagian warisan 1:1 di Indonesia khususnya terkait ketentuan pembagian harta warisan antara anak laki-laki dan perempuan dalam konteks hukum Islam. Ketentuan Kompilasi Hukum Islam (KHI) yang menetapkan perbandingan 2:1 menimbulkan persoalan ketika dihadapkan pada prinsip kesetaraan gender sebagaimana dijamin dalam UUD 1945 dan hukum internasional seperti CEDAW. Jenis penelitian ini adalah yuridis normatif dengan pendekatan konseptual dan komparatif, data utama berupa undang-undang, KHI, dan peraturan lain terkait sistem waris, kemudian analisis data dilakukan dengan deskriptif-analitis terkait norma hukum tertulis dalam perspektif kesetaraan gender dan keadilan. Hasil kajian menunjukkan bahwa pembuatan akta pembagian warisan oleh Notaris dan putusan hakim yang mengabulkan pembagian secara sukarela antar ahli waris tidak terstandarisasi karena tidak terdapat payung hukum nasional yang mengatur pembagian setara sebagai norma hukum, hal ini menyebabkan disparitas antar wilayah yurisdiksi dan menciptakan ketidakpastian hukum bagi masyarakat, urgensi reformasi hukum waris diperlukan untuk memberikan pilihan sistem hukum waris bagi setiap kelompok, menjamin kesepakatan keluarga dalam membagi warisan secara sah dan mengakomodasi prinsip keadilan sosial yang adaptif terhadap perkembangan zaman.

INTRODUCTION

Inheritance distribution constitutes an essential component of Indonesia's family law system. As a country adhering to a pluralistic legal structure, Indonesia accommodates three major legal systems: Islamic law, customary (adat) law, and Western civil law. Because the majority of Indonesia's population is Muslim, inheritance distribution generally follows the principles of Islamic law as codified in the Compilation of Islamic Law (KHI). Article 176 of the KHI stipulates that a male child receives a share equivalent to twice that of a female child. This provision is derived from Qur'an Surah al-Nisa' verse 11, which has long served as the doctrinal basis for inheritance rules in classical fiqh. However, the application of this provision in contemporary society has generated new challenges, particularly in relation to the growing recognition of gender equality within both national and international legal frameworks.

In many cases, daughters increasingly assume roles traditionally associated with sons, such as becoming the family's primary economic provider and caring for aging parents. This phenomenon has prompted questions regarding the relevance of unequal inheritance distribution between male and female heirs within the framework of modern conceptions of justice. Communities have begun to scrutinize the fairness of an inheritance system that differentiates shares solely

on the basis of gender, without considering the actual social roles and economic contributions of each heir.

Normatively, equality guarantees are articulated in Article 27(1) of the 1945 Constitution, which states that all citizens are equal before the law and government and must uphold the law without exception. Furthermore, Article 28D(1) affirms that every person has the right to fair legal recognition, guarantees, protection, and certainty, as well as equal treatment before the law. This commitment to equality is further reinforced through Indonesia's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), enacted through Law No. 7 of 1984. Constitutionally and internationally, Indonesia has thus committed itself to eliminating all forms of discrimination against women, including in the domain of family law and inheritance.

In practice, however, Indonesia does not yet possess positive legal regulations that explicitly allow or regulate equal inheritance distribution between male and female heirs within the context of Islamic law. The KHI continues to mandate the 2:1 ratio and does not provide any specific clause allowing families to agree to an equal distribution of estate assets. This situation creates a legal vacuum (*rechtsvacuum*) in the implementation of gender equality principles in inheritance distribution. As a result, the practice of 1:1 distribution is often conducted informally and holds weak juridical authority when challenged in court (Rahardjo, 2000).

A number of community groups and scholars have attempted to address this legal vacuum by referring to customary law, which is generally more flexible and responsive to social change. Catherine A. MacKinnon's theoretical framework in *Toward a Feminist Theory of the State* highlights that law often functions to perpetuate gender inequality; formal equality without transforming underlying power structures merely sustains the subordination of women. On this basis, law must be critically examined and reconstructed through the lived experiences of women so that it reflects substantive justice capable of dismantling systemic inequality (MacKinnon, 1989).

In *A Theory of Justice*, John Rawls introduces two primary principles of justice: equal basic liberties for all persons, and the difference principle, which allows inequalities only if they benefit the least advantaged (Rawls, 1971). These theories offer a robust philosophical foundation for re-evaluating inheritance distribution in a more equitable and just manner. Gender equality critiques patriarchal legal systems that tend to preserve structural disparities and advocates for legal reform grounded in the actual experiences and social roles of women in society (Ziba Mir-Hosseini, 1999).

Previous studies reinforce the need for such reassessment. Research by Adelina Nasution finds that inheritance law in Indonesia remains highly diverse, encompassing Islamic law, Western civil law, and customary inheritance systems (Nasution, 2018). Another study by Ernik similarly concludes that Indonesian inheritance law is pluralistic despite sharing the common function of regulating the transfer of assets after death (Ernik et al., 2023). Research by Suropto Bero documents that the distribution of inheritance between male and female heirs is not uniformly fixed at a 2:1 ratio in several Muslim-majority countries; some jurisdictions even apply a 1:1 ratio (Bero et al., 2025).

Studies by Dika Ratu Marfu'atun (Ratu et al., 2024) and Afiq Daim Ananda Abdullah (Daim & Abdullah, 2025) highlight the stark contrast between the *faraid* principles codified in the KHI—generally prescribing a 2:1 distribution between male and female heirs—and the *samen en gelijk* (joint and equal) principle in the *Burgerlijk Wetboek* (BW). This divergence frequently gives rise to difficulties in legal choice (*rechtskeuze*) for Indonesia's pluralistic society. However, none of these studies explicitly articulate the urgency of formal legal reform toward a 1:1 inheritance distribution within Indonesia's inheritance law framework.

Through this inquiry, it is expected that both theoretical and juridical arguments supporting the need for a more just, inclusive, and contextually responsive inheritance law reform will be identified.

RESEARCH METHODS

This study employs a normative juridical method using both conceptual and comparative approaches to examine and contrast inheritance law systems within Islamic law, customary law, and Western civil law. The primary sources of data

consist of statutory regulations such as the 1945 Constitution, Law No. 7 of 1984 on CEDAW, the Compilation of Islamic Law (KHI), and the 1955 Draft Law on Inheritance. Secondary data are drawn from books, legal journals, and other relevant academic literature. The data were analyzed descriptively and analytically, focusing on written legal norms and legal principles governing inheritance distribution in Indonesia from the standpoint of gender equality and justice. This approach aims to assess the extent to which existing inheritance law provisions align with the principles of substantive justice and gender non-discrimination.

DISCUSSION/RESULTS AND DISCUSSION

Regulation of Inheritance Distribution in the Indonesian Legal System

A. The Perspective of Positive Law on Inheritance

In the context of positive law, inheritance law is understood as a set of legal norms governing the transfer of ownership rights from a deceased individual to one or more of their heirs. According to Pitlo, inheritance law regulates the transfer of property resulting from a person's death, including its legal implications for the recipients of the estate, both in their internal relations and in connection with third parties (Pitlo, 1993).

Pitlo identifies three essential legal relationships within the inheritance system :

1. the relationship between the decedent and the heirs, which establishes the rights and obligations concerning the estate;
2. the relationship among the heirs, which reflects the principle of equality of rights—including equality between men and women as well as between spouses; and
3. the relationship between heirs and third parties, particularly regarding the responsibility for unresolved debts or obligations of the decedent.

The Indonesian Constitution, particularly Article 27(1) and Article 28D(1) of the 1945 Constitution, affirms that all citizens have equal standing before the law and government. At the international level, Indonesia has also ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) through Law No. 7 of 1984, which obligates the state to eliminate

discrimination across various spheres of life, including inheritance law. Thus, the demand for equal inheritance distribution may be understood as an effort to realize Indonesia's constitutional and international commitments to equality.

Based on the Circular Letter of the Supreme Court of the Republic of Indonesia dated 8 May 1991, No. MA/Kumdi/171/V/K/1991, the application of inheritance law is classified according to population groups: customary law applies to indigenous Indonesians; Western civil law applies to Europeans and their descendants; Dutch civil law applies to individuals of Chinese descent since 1919; and the law of the country of origin applies to descendants of 'Foreign Easterners' such as Arabs and Indians.

Inheritance law within the Western civil law system (Burgerlijk Wetboek/BW) is systematically regulated in Book II of the Indonesian Civil Code (KUH Perdata), particularly Articles 830 to 1130. This system derives from the 1848 Dutch Burgerlijk Wetboek, which was implemented in Indonesia. Western civil inheritance law is founded on the principles of individualism and legal certainty. Distribution of the estate is conducted per capita when the heirs inherit in their own right, and per stirpes when inheritance occurs through representation. The Civil Code categorizes heirs into four priority groups :

- Group I : children and the surviving spouse;
- Group II : parents and siblings;
- Group III : grandparents and other ascendants;
- Group IV : collateral relatives such as uncles and aunts.

Inheritance may be distributed according to statutory provisions (ab intestato) or based on the wishes expressed in a will (testamentary succession).

Since the promulgation of the Kompilasi Hukum Islam (KHI) in 1991, inheritance matters for Muslim citizens have been specifically regulated through the Religious Courts, which hold the authority to determine the distribution of inheritance pursuant to Article 49(b) of Law No. 3 of 2006 amending Law No. 7 of 1989.

In the context of national legal reform, the 1995 Draft Law on Inheritance (RUU Hukum Kewarisan) attempted to unify the various inheritance systems recognized in Indonesia. Article 16 of the Draft Law establishes a national

inheritance system based on the parental individual model, meaning that inheritance rights are granted to children from both parents without discrimination based on gender or lineage. This reflects a clear movement toward unifying Indonesia's inheritance laws.

Article 17 of the Draft Law stipulates that inheritance rights arise automatically without requiring an explicit declaration of acceptance from the heirs, in contrast to the Civil Code (KUH Perdata), which still allows heirs to reject an inheritance. Meanwhile, Article 10 regulates the administration of harta pusaka (ancestral property), a concept historically rooted in customary law (R. Subekti, 1992).

Structurally, Article 35 of the 1995 Draft Law also incorporates supporting institutions such as the Balai Harta Peninggalan (BHP), previously known only within the Western civil law system, and extends their application to all Indonesian citizens. Article 29 further provides that inheritance verification may be conducted by village heads or subdistrict heads for customary law communities, and by notaries for citizens of European descent. Articles 45 to 50 of the Draft Law also regulate grants (hibah) and wills (wasiat).

B. Inheritance Law from the Perspective of Islamic Law

In Islam, the term mawarith is the plural form of mirath, which etymologically refers to inheritance or the transfer of a deceased person's property. Islamic inheritance law provides a detailed framework specifying who is entitled to inherit (ashhab al-warithah) and who is legally barred from receiving an inheritance. The term fara'id—the plural of faridah—refers to the fixed shares of inheritance that have been definitively prescribed for specific heirs.

Terminologically, Islamic inheritance law encompasses two principal dimensions:

1. the determination of fixed shares for each heir according to the shari'a, both under normal conditions and in cases requiring adjustment through the methods of radd (redistribution of surplus estate) and 'awl (proportional reduction when assigned shares exceed the total estate); and
2. the mathematical and methodological knowledge governing the procedure of inheritance distribution.

According to A. Rofiq, *fara'id* includes the provisions defining who qualifies as an heir and the precise method for determining their respective shares (Rofiq, 2003). M. Idris Ramulyo defines inheritance law as a set of legal norms governing the transfer of ownership rights from a deceased individual to their heirs in a just manner, in accordance with the dictates of Islamic law (M. Idris Ramulyo, 1995). Hasbi Ash-Shiddieqy describes the science of inheritance as the discipline that examines who is entitled and who is not entitled to inherit, the respective proportions of each share, and the methodology of distribution (T.M. Hasbi Ash-Shiddieqy, 1976). Within the Indonesian legal context, the KHI reinforces this understanding by affirming that Islamic inheritance law constitutes a framework of norms regulating the mechanisms for transferring ownership of a decedent's estate and determining the inheritance shares of each heir.

Based on the various definitions above, it can be concluded that the law of inheritance in Islam serves as a legal instrument that ensures the transfer of property rights from a decedent to his or her heirs, taking into account the status and kinship relations of those entitled to inherit. The primary legal foundations for Islamic inheritance law derive from the Qur'an, the traditions of the Prophet (ḥadith), and the juristic reasoning (ijtihād) of classical and contemporary scholars.

1. Scriptural Evidence from the Qur'an

As the principal source of Islamic law, the Qur'an contains several verses that explicitly regulate matters of inheritance. One example is found in Surah al-Nisā' verse 7 :

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۚ نَصِيبًا مَّفْرُوضًا

Allah commands that the property of orphans be entrusted to them once they are capable of managing it, and that men and women alike receive their rightful inheritance shares, regardless of the amount of the estate. This verse constitutes an explicit recognition of women's inheritance rights—an important advancement within the socio-cultural context of the Qur'anic revelation.

Islamic inheritance law is constructed upon principles of justice that balance rights and responsibilities within the family structure. A frequently cited verse is Surah al-Nisa' verse 11:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثُ مَا تَرَكَ ۚ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا الشُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ ۚ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوُهُ فَلِلْأُمِّهِ الثُّلُثُ ۚ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِلْأُمِّهِ الشُّدُسُ ۚ مِنْ بَعْدِ وَصِيَّهِ يُوصِي بِهَا أَوْ دَيْنٌ ۚ وَإِلَّا فَمَا تَرَكَ لَكُمْ نَقَصٌ ۚ فَرِيضَةٌ مِنَ اللَّهِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

This verse stipulates that the share of a son is equal to that of two daughters. However, contemporary scholars such as Khaled Abou El Fadl and Abdullahi an-Na‘im argue for the contextual interpretation of inheritance verses, emphasizing that considerations of social conditions and substantive justice must inform modern applications (Khaled Abou El Fadl, 2001). Such perspectives open the possibility for *ijtihad* toward more equitable inheritance distributions in specific contexts.

Surah al-Nisa’ verses 11 and 12 also provide detailed technical regulations on inheritance allocations among children, parents, spouses, and maternal siblings, introducing key principles such as proportional division—e.g., the son’s share being twice that of the daughter—and the central role of primary heirs such as parents and spouses.

2. Evidence from the Prophetic Traditions (Ḥadīth)

The ḥadīth literature also plays a crucial role in affirming and elaborating the inheritance rules outlined in the Qur’an. A well-known narration recorded by al-Bukhārī and Muslim (Al-Hanbali, 1987) states:

عَنِ ابْنِ عَبَّاسٍ ... أَلْحَقُوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا أَبْقَتْ الْفَرَائِضُ فَلِأَوْلَى رَجُلٍ ذَكَرٍ.

This ḥadīth emphasizes that the fixed shares (*fara’id*) must be allocated to their rightful recipients (*aṣḥab al-furuḍ*), and whatever remains of the estate is to be assigned to the closest male agnate (*‘aṣabah*) in the lineage.

A narration from Ibn Mas‘ud further clarifies the inheritance provisions involving daughters, granddaughters, and sisters (Al-Bukhori, 1992). It demonstrates that inheritance distribution is conducted proportionally in accordance with the legal precedents established by the Prophet Muhammad (peace be upon him):

عَنِ ابْنِ مَسْعُودٍ رَضِيَ اللَّهُ عَنْهُ فِي بِنْتٍ, وَبُنْتِ ابْنٍ, وَأُخْتِ فَضَى النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ لِلابْنَةِ الْيُصْفَى وَلابْنَتِهِ
الْإِثْنَيْنِ السُّدُسَ تَكْمِلَةَ الطَّلَقَيْنِ وَمَا بَقِيَ فَلِلْأُخْتِ رواه البخاري

“From Ibn Mas‘ūd (may Allah be pleased with him) regarding the shares of a daughter, a son’s daughter, and a sister: the Prophet (peace be upon him) ruled that the daughter receives one-half, the son’s daughter one-sixth to complete two-thirds, and the remainder goes to the sister” (Narrated by al-Bukhari).

3. The Role of Ijtihād in Inheritance Law

Ijtihad is a crucial instrument in the development of Islamic law, including matters of inheritance. Because the textual sources (naṣṣ) are limited while social realities continue to evolve, rational effort by scholars is necessary to interpret these texts in order to address emerging needs. According to Abdul Karim Zaidan, ijtihād is the earnest effort of a qualified jurist (mujtahid) to derive legal rulings through recognized methods of legal reasoning (istinbat) (Abdul Karim Zaidan, 2002).

Within the context of inheritance, ijtihad becomes essential when cases of ‘awl arise (where the total prescribed shares exceed the available estate) or when inheritance issues are not explicitly covered in the textual sources. One notable example of ijtihād related to inheritance is that of ‘Umar ibn al-Khaṭṭāb, who introduced the method of thuluth al-baqi in determining shares among a husband, wife, father, and mother. This method was subsequently adopted by the majority of the Companions and by the four major Sunni schools of law.

Ijtihad also plays a significant role in the contemporary adjustment of inheritance law. Yusuf al-Qaradawi classifies modern ijtihad into three categories:

- a. ijtihād intiqā’i—selecting the most relevant opinions from earlier scholars,
- b. ijtihad insha’i—formulating new rulings, and
- c. a combination of both approaches (Yusuf al-Qaradawi, 2001).

The development of Islamic law is also reflected in formal codifications such as the Indonesian Kompilasi Hukum Islam (Compilation of Islamic Law), which provides positive legal regulation of the inheritance system based on sharī‘ah principles while incorporating interpretations suited to Indonesian social conditions.

Thus, Islamic inheritance law constitutes a complex system grounded in divine revelation and expanded through ḥadīth and ijtihad. Its strength lies in the harmony between divine norms and human reason, as well as in its flexibility to respond to social change through the mechanism of ijtihād.

C. Inheritance Systems in Indonesian Customary Law

Broadly speaking, customary inheritance systems in Indonesia can be classified based on how inherited property is treated—namely, whether the property may be divided or must remain intact. In societies with bilateral kinship systems, such as in Java, inheritance is generally distributed individually, reflecting an individual inheritance model. Conversely, communities that adhere to unilineal kinship systems (patrilineal or matrilineal) tend to preserve collective or mayorat systems, in which property is not divided (Hilman Hadikusuma, 1981).

1. Individual Inheritance System

The individual inheritance system refers to a pattern in which inherited property is distributed personally to each heir. This model is found among various customary communities, including those in Java, Madura, Toraja, Aceh, Papua, and Lombok. In this system, each child of the deceased—whether male or female—receives a portion of the property directly from their parents or grandparents.

Swe's research reveals that within the cultural sphere of the Yogyakarta Palace (Keraton Ngayogyakarta Hadiningrat), the individual inheritance system has interacted and adapted to Islamic legal norms. This indicates an ongoing dialectic between customary values and religious principles in shaping inheritance practices (Swe, 2008).

The Indonesian customary law landscape demonstrates significant diversity in inheritance practices. Certain customary communities, such as the Minangkabau with their matrilineal system, have long implemented inheritance arrangements that are non-discriminatory on the basis of gender. This illustrates that customary law possesses a degree of flexibility that can serve as an inspiration for developing a national inheritance system that is both inclusive and adaptive.

2. Collective Inheritance System

The collective inheritance system is grounded in the principle that inherited property is not divided but is instead communally owned by the extended family. Its management and use are determined through deliberation under the leadership of the family head. This practice can be observed in the harta pusaka system of the Minangkabau and in the Tanah Dati tradition of Hitu, Ambon, where heirs are granted only rights of use rather than ownership.

A transformation from collective to individual inheritance may occur when heirs begin to manage and own portions of the property privately. Such changes typically emerge when the authority of the family head declines or when the practical needs of individual family units become increasingly decentralized.

3. Mayorat Inheritance System

The mayorat system is a form of inheritance in which the entire estate is transferred to a single child—either male or female—depending on the local custom. This system can be found among customary communities in Bali, Semendo (South Sumatra), Lampung, and Papua. The transfer of inheritance to one heir is often justified by the belief that the property represents the unity of the family and thus should not be fragmented. The rationale for preserving undivided property varies: its indivisible nature, its connection to particular offices or territorial rights, or the need to protect vulnerable family members such as children or widows.

Djaren Saragih distinguishes between two types of mayorat: male mayorat and female mayorat. Male mayorat typically occurs in Bali and Lampung, where the eldest son inherits the estate. Female mayorat, on the other hand, is found among the Semendo and Dayak communities, where the eldest daughter inherits the property and assumes leadership of the family, accompanied by her brother in a supportive role (Djaren Saragih, 2005).

A comparative table of the three inheritance systems practiced in Indonesia is presented below :

Aspect	Islamic Law	Customary Law (Hukum Adat)	Western Civil Law (Burgerlijk Wetboek)
Legal	Al-Qur'an (e.g., Q.S.	Customary norms and	Indonesian Civil

Aspect	Islamic Law	Customary Law (Hukum Adat)	Western Civil Law (Burgerlijk Wetboek)
Foundation	An-Nisa' 11, 176), Hadith, Ijma', Qiyas, Compilation of Islamic Law (KHI), Book II Articles 176–193	kinship systems (patrilineal, matrilineal, bilateral), Article 18B(2) of the 1945 Constitution	Code (Burgerlijk Wetboek), Book II Articles 830–1130
Shares of Male and Female Children	A male child receives two times the share of a female child (2:1)	Varies by kinship system: patrilineal (male priority), matrilineal (female priority), bilateral (equal shares)	Equal shares between male and female heirs (Article 852)

Table 1. Comparison of inheritance distribution systems

Analysis of Gender Equality and Justice in the Urgency of Reforming Indonesia's Inheritance Distribution Framework

Indonesia adopts a pluralistic legal system consisting of Islamic law, customary law, and Western civil law, each employing distinct approaches to regulating inheritance distribution. While this plurality reflects Indonesia's cultural and religious diversity, in practice it often produces overlaps or normative gaps, particularly when none of the three systems explicitly addresses contemporary issues—such as equal inheritance distribution between male and female heirs.

The Compilation of Islamic Law (KHI), enacted through Presidential Instruction No. 1 of 1991, serves as the primary legal source for resolving inheritance disputes among Muslims in Indonesia. Article 176 of the KHI states: “A son receives a share equivalent to two daughters.” This provision explicitly adopts the rule derived from Qur'an Surah An-Nisa' verse 11, which forms the doctrinal foundation of classical Islamic inheritance jurisprudence. Although the KHI adheres to a textual approach, some judges in the Religious Courts have applied *istihsan*, *maslahah*, and reinterpretation to address specific cases—

including instances in which heirs voluntarily agree to distribute the estate equally. However, these practices are not standardized nationwide due to the absence of a national legal framework that formally recognizes equal distribution as a normative option. Consequently, disparities arise among jurisdictions, creating legal uncertainty for the public. (Nurul Huda, 2022)

Customary law demonstrates a high degree of flexibility and greater adaptability to social change. Several kinship systems such as those in Minangkabau and Bali implement inheritance arrangements that differ substantially from Islamic law. In the Minangkabau matrilineal system, women are the primary heirs to ancestral property. This indicates that certain customary systems have long embraced principles of justice rooted in social roles and familial responsibilities rather than biological sex alone. Nonetheless, the normative authority of customary law has become increasingly marginalized by the dominance of state formal law, weakening its influence in inheritance disputes brought before formal judicial institutions.

For non-Muslims, inheritance matters fall under the Indonesian Civil Code (KUHPerdata), which in principle provides equal inheritance rights to men and women. However, the Civil Code applies to only a small segment of Indonesia's population and has not been actively developed to form the backbone of a national inheritance system. Indonesia still lacks a comprehensive and socially responsive National Inheritance Law that accommodates legal pluralism and promotes gender equality. As a result, an explicit legal basis permitting a 1:1 inheritance distribution remains absent from the national legal framework—creating a legal vacuum for families seeking to implement such principles.

In practice, many families consciously choose to distribute inheritance fairly and equally, especially when considering the economic contributions and social responsibilities of daughters toward their parents. Such agreements are often formalized before a notary or made informally within the family setting. (Ahmad Sofyan, 2020) However, these consensual arrangements face juridical vulnerabilities when disputes arise. The absence of a clear legal norm providing protection for equal distribution agreements leaves them susceptible to challenge

by other heirs, who may revert to the applicable positive law to dispute the arrangement.

Equal (1:1) inheritance distribution is often perceived as conflicting with Islamic legal norms derived from the Qur'an. Conversely, the spirit of equality mandated by the 1945 Constitution guarantees that all citizens have equal status before the law (Article 27(1)) and are entitled to fair treatment and equal legal protection (Article 28D(1)). These constitutional guarantees are reinforced by Indonesia's ratification of CEDAW through Law No. 7 of 1984, which obliges the state to eliminate all forms of discrimination against women, including in matters of inheritance. This tension reflects a divergence between religious norms and universal human rights principles. In the absence of regulations that reconcile these two spheres, society is placed in a position of normative dilemma.

The decision of the Supreme Court of the Republic of Indonesia, Decision No. 368 K/AG/1995, represents one of the most progressive precedents in the history of Islamic inheritance law in Indonesia. The ruling demonstrates judicial courage in interpreting Islamic law through the lenses of gender equality and substantive justice. In this case, the Supreme Court granted part of the cassation petition filed by a female heir seeking a more equitable distribution of inheritance. The Court reasoned that her economic and social contributions to the family were commensurate with those of the male heirs. The panel of judges held that inheritance distribution cannot be rigidly understood according to the 2:1 ratio stipulated in Article 176 of the Compilation of Islamic Law (KHI), but must instead consider the principles of public interest (*maslahah*) and substantive justice in accordance with the concrete circumstances of the heirs.

Supreme Court Decision No. 368 K/AG/1995 aligns with the five fundamental objectives (*maqāṣid al-sharī'ah*) of Islamic law.

- In terms of *ḥifẓ al-dīn* (protection of religion), the decision reflects the principles of *al-'adl* (justice) and *al-maṣlaḥah* (public interest), embodying the religious injunction to uphold justice in all aspects of life.
- In *ḥifẓ al-naḥs* (protection of the person), the ruling safeguards the dignity and worth of women as human beings who possess equal status before the law.

- In *ḥifẓ al-‘aql* (protection of reason), the judges’ use of rationality and contextual *ijtihād* represents a concrete expression of protecting human intellect so that the law may continue to evolve with changing times without losing its essential values.
- In *ḥifẓ al-nasl* (protection of lineage), justice within the family serves as the foundation for the sustainability of a harmonious and healthy generation.
- In *ḥifẓ al-māl* (protection of property), the ruling ensures that wealth does not become a source of inequality or harm, but instead functions as a means of promoting familial welfare.

From the perspective of John Rawls’ theory of justice, Indonesia’s pluralistic inheritance system has not fully embodied the principle of fair equality of opportunity. The coexistence of divergent inheritance norms produces structural inequality for Muslim women who remain bound to the textual interpretation embedded in the Compilation of Islamic Law (KHI). In contrast, the principle of substantive justice requires that every individual possess equal rights and opportunities to family economic resources. In *A Theory of Justice*, Rawls asserts that differential treatment is only justifiable when it benefits the least advantaged members of society (the difference principle) (Rawls, 1971). In the context of Supreme Court Decision No. 368 K/AG/1995, this principle was implicitly applied by granting a more equitable share of inheritance to the daughter, given that her economic and social responsibilities were equal to—if not greater than—those of the male heirs. Thus, gender differences that previously justified unequal distribution are no longer relevant within the framework of contemporary social justice. In present-day society, women are no longer in a position of economic dependency on men as was the case in the socio-historical context of early Islamic Arabia. Instead, many women now serve as primary economic providers for their families (Nur Rofiah, 2020).

Within Feminist Legal Theory (FLT), Catherine A. MacKinnon argues through a contextual jurisprudential feminist approach that the law must be sensitive to power relations and the lived social experiences of women. In Supreme Court Decision No. 368 K/AG/1995, the justices internalized this

principle by assessing that legal texts must be interpreted in light of social realities so as not to reinforce the subordination of women. Justice, therefore, cannot be understood solely in formalistic terms (equal treatment), but must be approached through substantive and contextual equality (MacKinnon, 1989).

In the context of Islamic inheritance law, the 2:1 ratio is increasingly viewed not as an immutable divine command but as a social construction legitimized through religious interpretation—one that remains open to reform and reinterpretation (Ziba Mir-Hosseini, 1999). FLT thus encourages the deconstruction of traditional inheritance norms to make them more accommodating of women's experiences and to promote their equal rights. Accordingly, a 1:1 inheritance distribution is not an act of rebellion against religion; rather, it constitutes part of the broader pursuit of genuine justice within the framework of *maqāṣid al-shari'ah*.

Amid the absence of formal legal provisions explicitly regulating equal inheritance distribution between men and women, Indonesian society has exhibited progressive social dynamics. Local practices, family agreements, and reinterpretations of religious values have emerged as responses to legal norms perceived as increasingly misaligned with contemporary concepts of justice. The practice of dividing inheritance equally (1:1) based on unanimous agreement among heirs is often motivated by:

1. The daughter's role in caring for parents until the end of their lives;
2. The daughter's significant economic contribution to the family;
3. Growing familial awareness of social justice and equality principles (Lilis Suryani, 2023).

Within the framework of progressive legal theory, living law—the law that lives within society—often proves more relevant than written law, particularly when formal law no longer reflects social justice. The emergence of equal inheritance practices across communities demonstrates that equality has become a socially accepted norm, even if it has yet to be formally codified (Rahardjo, 2009). Given the pluralistic character of Indonesian law, which is open to the recognition of customary and unwritten law, living law may serve as a foundation

for encouraging inheritance law reform that is more responsive to the demands of substantive justice.

The absence of explicit legal provisions accommodating equal inheritance distribution underscores the urgent need for comprehensive inheritance law reform in Indonesia. This reform may be advanced through several approaches:

1. The codification of a pluralistic and inclusive national inheritance law;
2. The reinterpretation of Islamic inheritance jurisprudence based on the objectives of Islamic law (*maqāṣid al-shari‘ah*);
3. Empowering judges to employ progressive *ijtihad*.

Such reforms do not entail abandoning religious values but rather aligning them with the principles of social justice and equality upheld within both national and international legal systems. In doing so, Indonesia would provide diverse communities with viable options for inheritance systems, ensure the legal validity of family agreements on inheritance distribution, and accommodate principles of social justice that are adaptive to contemporary developments.

CONCLUSIONS

Indonesia’s inheritance law framework does not yet contain positive legal norms that explicitly accommodate an equal (1:1) distribution of inheritance between men and women. Under Islamic law, as codified in the Compilation of Islamic Law (KHI), male heirs continue to receive twice the share of female heirs. Customary law and civil law offer more flexible approaches, yet they lack dominant authority within the national legal system. This legal vacuum creates uncertainty and impedes society’s ability to access gender-equitable justice.

An analysis of Indonesia’s plural inheritance systems and Supreme Court Decision No. 368 K/AG/1995 reveals a notable paradigm shift within the religious courts—from a strictly textual interpretation toward a contextual, substantive-justice-oriented interpretation that prioritizes public interest (*maṣlaḥah*), gender equality, and social responsibility as the foundations for inheritance distribution. The integration of Islamic justice principles with the modern justice theories of Rawls and MacKinnon underscores the necessity of ensuring inclusive rights and equitable treatment.

This study recommends three practical measures: the codification of a pluralistic and inclusive national inheritance law; a maqāṣid al-shari‘ah-based reinterpretation of Islamic inheritance jurisprudence; and greater judicial empowerment to apply progressive ijtihad. These efforts are expected to contribute to the realization of a national family law system that is just, humanistic, and aligned with Islamic values as well as constitutional principles as exemplified by Supreme Court Jurisprudence No. 368 K/AG/1995, which affirms social justice in inheritance distribution.

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