



INDONESIAN INHERITANCE SYSTEM BASED ON ISLAMIC LAW, CIVIL CODE, MATRILINEAL CUSTOMS, AND GENDER EQUALITY PERSPECTIVES

**Achmad Gusti Malayudha¹, Widya Sari², Angga Puja
Asiandu³**

¹Program Studi Ilmu Komunikasi, Universitas Mercu Buana,

²Program Studi Fisika, Universitas Gadjah Mada, Yogyakarta

³Program Studi Biologi, Universitas Gadjah Mada, Yogyakarta

Jl. Ring Road Utara, Depok, Kab. Sleman, Daerah Istimewa Yogyakarta 55281


angga.puja.asiandu@mail.ugm.ac.id

Keywords:

Decedent, Heirs,
Inheritance,
Minangkabau Tribe,
Islamic Law.

Abstract

In this article, the authors discussed the inheritance system in Indonesia. The inheritance distribution system in Indonesia is based on Islamic law, civil code, and customary law. On the other hand, gender equality activists have their perspectives regarding the justice of the distribution system based on the proportion received by men and women. Based on the discussion, it was known that there are similarities and differences among Indonesian inheritance distribution systems. Each of the systems regulates that the testator must die and the main heirs are blood-related to the decedent. In Islamic law, men receive more than a woman with a ratio of 2:1 due to men's responsibility to their family. Meanwhile, the proportion between men and women regulated by the Indonesian civil code is equal. In Minangkabau matrilineal customary law, as a system based on the mother's lineage, the proportion of inheritance is distinguished between high inheritance and low inheritance. The high inheritance will be given to the woman and the low inheritance will be shared equally between men and women. However, some gender equality activists might see those proportions as a form of injustice. But, each of the systems has its perspective regarding justice.

Vol. 6, No. 01, 2023
 [10.20414/sangkep.v2i2.](#)

Submitted: Dec. 12nd, 2022
Accepted: June 19th, 2023



A. INTRODUCTION

Indonesia is one of the big countries which has a total of 1.9 million km² area occupied by 270.20 million people. It is considered a multicultural country with eccentric, rare, and diverse cultures (BPS, 2021). Cultures are divided into real objects and intangibles. Intangible culture refers to values, societal norms, and traditions (UNESCO, 2021). The existence of culture is due to a continuous learning process that creates ideas that are inherited from generation to generation (Aziz, 2021). Indonesian culture is related to the value and behavior of Indonesian people (Hasanuddin, 2017).

There are eight aspects of values in society. They are divine values, human values, life values, spiritual values, ritual values, moral values, social values, and intellectual values (Aziz, 2021). Jain et al. (2020) explain that social, cultural, ethical, intellectual, physical, and economic conditions form the values that exist in society. These values are considered culture, and culture itself is a value system (Hasanuddin, 2017). Sometimes certain people will be faced with a new culture and collide with values prevailing in society. Additionally, acculturation makes the values rooted in certain groups attached with foreign values. Acculturation occurred when Islam entered Indonesia, where the people embraced Hinduism and Buddhism (Jayadi & Rahmawati, 2020).

The entry of Islam into Indonesia was estimated before the 13th century under the influence of trade. Many theories explain that Islam was brought by Arabs, Indians, Persians, or Chinese (Husada, 2016). Islam certainly influences the value system in Indonesia, one of which is the inheritance distribution system. The inheritance distribution in the jahiliyyah era (before the existence of Islam) was only given to men instead of women, while the widow was a part of the inherited property (Amalia & Az Zafi, 2020). In the Islamic era, the law on inheritance distribution began based on kinship, adoption, and the existence of hijrah (migration).

Islam has guaranteed ownership of property. Property ownership is divided into individual, public, and state. One of the sources of property ownership is inheritance. In inheritance, there is a process of transferring ownership rights from the deceased to the heirs (Akbar, 2012; Jayadi, 2022). In Islam, inheritance distribution needs to fulfill some principles (Sakirman, 2016), one of which is balanced justice. This principle emphasizes that the rights are proportional to the obligations. The ratio of inheritance distribution between men and women is 2:1 (Amalia & Az Zafi, 2020). The obligation of men as breadwinners in the family is proportional to the obtained rights. Meanwhile, the legal system in Indonesia is also influenced by civil law and customary law.

Civil inheritance law is regulated in the civil law code used by the Chinese in Indonesia. The Civil Code stipulates that the party entitled to inherit is

deceased heirs, and Article 830 of the Civil Code states that inheritance takes place due to death (Rantung, 2018). There are two distribution ways of inheritance according to the Civil Code, *ab intestato* and testamentary (Sagala, 2018). The *ab intestato* refers to the method of receiving the inheritance by the decedent due to a family relationship (indicated by 832 BW), while the testamentary refers to the inheritance designated in the will (899 BW; Burgerlijk Wetboek) (Sutanto & Tanuwidjaja, 2017).

Furthermore, the inheritance distribution system in Indonesia is influenced by customary law. There are three family systems in Indonesia, the patrilineal system, the matrilineal system, and the bilateral or parental system. The form of society and the family system affect the diversity of inheritance laws in Indonesia (Barlinti, 2013). In matrilineal, the family line and inheritance are based on the mother's lineage. This system is found in the Minangkabau tribe, West Sumatra (BBC, 2016). Among the tribes in Indonesia, Minangkabau is known as the seventh-largest tribe (Na'im & Syaputra, 2011). According to this tribe, women are symbolized by the well-known term in *Limpapeh Rumah nan Gadang* or the main pillar of the house (Yanti, 2014; Putri et al., 2019). The female population determines the sustainability of the tribe. According to their belief, when the female population of the tribe begins to decrease, the extinction of the tribe will be threatened (Putri et al., 2019).

Besides, feminists also demand an equal distribution of inheritance between men and women due to a role shift between men and women in the modern era. The campaign of inheritance distribution is contrary to Islamic law which is mandatory to 2:1 (Amalia & Az Zafi, 2020). This feminist movement is based on the group's desire for equal rights between men and women (Sulistyowati, 2020). The term "Muslim feminist" appears when discussing the struggle of this group in a campaign that the patriarchal or patrilineal system is not by the principles of the Al-Qur'an on gender equality (Harisuddin, 2015). Patriarchy understands that adult men have full power over women and children, property, economic resources, and decision-making (Wirasandi, 2019).

From the earlier mentioned problems, community values (includes religious values), customs, culture, and group views affect the inheritance distribution system in Indonesia. As a value system, religion plays a role in affirming and clarifying the normative structure and social systems as well as providing understanding and interpretation related to the world. Culture contains religious values and messages, philosophical insights, and local wisdom that are essential for humans' life (Aziz, 2021). The fundamental difference between religion and culture is that religion comes from God, while culture is created by human creation, taste, and initiative (Ridwan et al., 2016). Therefore, the purpose of this study is to discuss the comparison of Indonesia's inheritance system based on

Islamic law, Civil Code, Minangkabau Tribe Matrenialistic Customary, and Gender Equality Perspective.

C. RESULTS AND DISCUSSION

Inheritance According to Islamic Law Perspectives

Indonesia is the highest Muslim populated-Country in the world. It encourages Islamic values and norms to be applied in most social life in Indonesia. One of them is the inheritance distribution system (Bachtiar, 2012). Islamic values in Indonesia rotted from Arabic swordsmen years ago. Over time, these Islamic values become part of the way people live in Indonesia. Thus, Islamic values and laws are also used as a source of law, especially for Muslims.

Islamic law includes the Qur'an, Sunnah, Ijma', and Ijtihad as its sources. The Qur'an is a holy scripture received by the Prophet Muhammad SAW. which contains the words of Allah SWT. It includes rules of life in this world and the hereafter including the rules regarding inheritance law. Inheritance law is a law covering the principles of transferring rights or property from a person to the next recipient when the person who owns the property dies. In Islamic law, the distribution of inheritance can be carried out fairly according to Islamic principles. There are three development periods of Inheritance law in Islam. The first period is the Mecca period (610-622 AD). During that period, several verses contain the inheritance system in Islam, including Q.s. Al-Baqarah verses 180, 181, 182, and 240. These verses hold the will, the sins of the will changer, the reconciliation of conflicts regarding inheritance, and the provision of providing support for the wife left behind. Furthermore, Q.s. Al-Maidah verses 105-106 contain the importance of witnesses in making a will (Sakirman, 2016).

In Islamic law, the inheritance distribution system includes female heiress and male heirs as stated in Q.S. An-Nisa verse 7. The difference in the portion of inheritance obtained by each individual is regulated according to Islamic principles. As for justice in the distribution of inheritance, there are different perspectives between Islam and justice for the general view. In general, in the inheritance system according to Islamic law, the number of inheritance received by men is more than women (Bachtiar, 2012).

Inheritance law in Islam has several purposes. The first objective is to regulate all rights and obligations between the bereaved families. To ensure that the inheritance will be received by the entitled receiver. As well as to ensure its sustainability from generation to generation. Additionally, inheritance law in Islam also aims to avoid potential disputes due to the seizure of inheritance. Also, Islamic inheritance law aims to ensure economic distribution through the transfer of inheritance to legitimate and entitled recipients (Nawawi, 2016).

There are some principles in Islamic law. They are ijbari, the bilateral principle, the individual principle, the balanced justice principle, and inheritance

due to death (Lubis & Simanjuntak, 1995; Bachtiar, 2012). The Ijbari principle is a coercive principle that states that the ownership of the property of a person who dies will be automatically transferred to his/her living heirs. This principle focuses on the origin of the property, the amount of property, and the recipient of the inheritance. The bilateral principle is a principle that explains the source of the inheritance. Based on this principle, an heir, both male and female, obtains inheritance rights from both parents. In addition, bilateral rights also apply to the system of lateral inheritance through the father or the mother. According to the individual principle, the heirs have full rights to the inheritance. The principle of balanced justice emphasizes the acquisition of inheritance rights based on their needs and uses. Meanwhile, inheritance due to death states that the transfer of inheritance rights can only occur when the owner of the property dies (Bachtiar, 2012).

In Islamic inheritance law, some elements must be fulfilled. These elements include the person who gave the inheritance (al-muwarrith), heirs (al-warith), inheritance (al-mirath), and cultural filter barriers (al-Mawani' al- Irth) (Nawawi, 2016).

Deceased Person who gave the inheritance (decedent), A decedent is a person who has died who left his property which is transferable to another person who is entitled to receive the inheritance. The types of heirs in Islam are regulated in Q.s An-Nisa Verse 11. The heirs of the decedents are their parents. The heirs of the father and mother of the decedent are their children. Then, the heirs will be developed to their descendants below the child group, as well as the predecessor above the father group (Syarifuddin, 2004; Nawawi, 2016).

The Heirs, Heirs are closely related people to the decedents, people with marital relations, and relationships resulting from freeing their slaves (Al-Jundi; Nawawi, 2016). In Islam, some conditions must be met to become the heir. The first condition is that the heirs are still alive, both living in the world and living in the womb. The second condition is to be free from all kinds of things or actions or conditions that can cut their status as the heirs. Also, they are not hindered by closer relatives to the decedent (Nawawi, 2016).

In Islam, heirs are divided into several groups, namely kinship groups, the level of inheritance, and hijab-mahjub heirs. The group of heirs based on kinship is the Nasabiyah group which is a group that has blood relations with the decedent, and the Sababiyah group, which is a group of heirs who receive rights due to certain things. The causes of the Sabadiyah group becoming heirs are marriage, freed slaves, and an agreement. The group of heirs based on the level of acquisition of inheritance is a group that receives certain proportions that have been determined Islamically on inheritance. Meanwhile, the heirs of the hijab-mahjub are the parties who are hindered in obtaining the legacy. These barriers can be partial rights or full proportions (Nawawi, 2016).

According to Islamic inheritance law, heirs are sons, daughters, father and mother, husband and wife, brothers and sisters. They are stated in several verses in Q.s. An-Nisa. The amount of inheritance received in Islamic law is as follows. If the decedent leaves a biological child, the father and mother will get one-sixth of the property left behind which is listed in the Q.s. An-Nisa verse 11. Additionally, the proportion of one-sixth of the inheritance will also be obtained by sisters and brothers of the decedent (Bachtiar, 2012).

Not only receiving the legacy from the decedent, but An heir also has several obligations. The obligations of the heirs are obliged to pay the cost of managing the corpse, pay off debts owed by the testator, and are obliged to carry out or fulfill the will of the testator or dead person (Khisni, 2017; Assyafira, 2020). Also, according to Muhammad Ali Hasan, heirs are obliged to pay zakat if the decedent dies in a state of obligatory zakat (Hasan, 1979; Assyafira, 2020).

Inheritance, Inheritance is property or everything left by the testator that can be given to the heirs. If there is no inheritance, then inheritance will not occur (Syarifuddin, 2004; Nawawi, 2016). Before the inheritance can be distributed to the heirs, the property should be freed from the debt of the testator, the costs incurred to take care of the decedent, the will, medical expenses, and free from the testator's debt to Allah SWT. After all the requirements for inheritance are met, the remaining assets can be distributed to the heirs (Nawawi, 2016).

The amount of property or inheritance distributed to the heirs is net assets that have been reduced by debts owed by the deceased (Suparman, 2007; Wahyuni, 2018). Although the law of inheritance in Islam has been determined as the word of Allah SWT. in the Qur'an, there are differences in the application of inheritance law in some Muslim-majority countries. They can be caused by things that have not been explained in detail (Karim, 2012; Wahyuni, 2018), and differences of opinion between jurists and Islamic law in dealing with inheritance (Ramulyo, 1994; Wahyuni, 2018).

Inheritance barrier, Barriers to inheritance are slavery, murder, and religious differences. Inheritance barriers are things that prevent a person from receiving an inheritance from the decedent or testator (Nawawi, 2016).

The Concept of Justice on Islamic Perspectives

In Islamic law, the transfer of inheritance is also regulated in Q.s. An-Nisa Paragraph 12 contains a system of inheritance transfer when a person dies without a husband or wife, children, father, and mother. Meanwhile, the proportion of inheritance obtained by men is twice as much as the amount received by women. It is due to the role of men as holders of responsibility for their families which also includes responsibilities to women. It is fair considering that a man's property will also be given to a woman in her daily life based on a sense of responsibility and action. The amount of inheritance received by children is also higher than that received by their parents due to their responsibility to their parents. It is the justice concept in Islamic law (Bachtiar, 2012).

One of the cons of the inheritance-sharing system in Islam is Hazairin (1960), who thinks that the inheritance-sharing system in Islam is more patrilineal (Hazairin, 1961; Sakirman, 2016). Some concepts of inheritance in Islam are also slightly different from customary law in Indonesia. In Indonesia, customary inheritance law contains several systems, individual inheritance, collective system, and majority inheritance system. Based on individual inheritance, the inheritance will be distributed according to a bilateral, matrilineal, or patrilineal system (Hazairin, 1961; Sakirman, 2016). Meanwhile, based on Islamic law, the proportion of inheritance has been determined based on Islamic law itself. In inheritance based on a collective system, inheritance is not distributed among several heirs, but to certain people with a certain priority. In majority inheritance, the oldest child is the holder of power over the inheritance (Hasan and Sumitro, 1994; Sakirman, 2016).

However, the concept of justice in Islam is slightly different from the general understanding. Justice according to Islam is based on the responsibilities of the recipient of the inheritance. In general, the responsibility of men is greater towards women so that the amount received is even higher (Syarifuddin, 1984; Sakirman, 2016). In Islam, men are responsible for their families, including women. An unmarried woman is dependent on her parents. Whereas when married, a woman becomes the responsibility of her husband. A woman who has been married to a man does not have an obligation to spend her wealth on her family. However, providing for his family, wife, including children is obligatory for a man (Said, 2013; Sakirman, 2016). Besides, in certain cases, the amount of inheritance received by men and women does not follow the 2:1 rule. Brothers and sisters will get the same share. Also, the proportion of daughters is higher than husbands (Sakirman, 2016).

Meanwhile, there are some differences between inheritance law in Islam and based on customary law. Inheritance in Islam will be applied when someone owed the inheritance has died, while in customary law inheritance is not tied to the status of the death of the person who has the right to give his/her inheritance. In customary law, a person who owns property can inherit or give the property while still alive. The proportion of inheritance distribution in Islam is 2:1, while in the customary system the proportion of inheritance distribution is based on mutual agreement. In Islamic law, there are individual and bilateral inheritance laws, while in customary law there are also collective and majority systems. The order of heirs in Islam has been determined, while the order of heirs in customary law is adjusted to kinship relations and local law. Also, the form of inheritance in customary law can be in the form of heirlooms (Haries, 2014).

Inheritance System Based on Indonesian Civil Code

Civil code is divided into two groups, public law, and civil law. The word civil comes from the Javanese language, *prodoto*, which means fighting or disputing. Civil law is the law of dispute or the law of contention. Some experts

also provide opinions regarding the meaning of civil law, as expressed by Sri Wedari Masjchoen Sofwan who argues that Civil law is a law that regulates the interests between every citizen and other citizens. From some of the experts' opinions related to the definition of civil law, it can be concluded that civil law is a law that regulates the interests or protection of one person with another. This civil law is classified into two parts: written and unwritten meanings. Written civil law is a book of civil laws, and this unwritten law is customary law. The relationship between written and unwritten civil law is contained in Articles 1399 and 1347 of the Civil Code (Meliala, 2014).

The right of inheritance is regulated in the Indonesian Civil Code. This Civil Code views inheritance rights as a material right to the assets of people who have died (Article 528 of the Civil Code). Article 584 of the Civil Code also states that inheritance rights are one way to obtain property rights, while the way to obtain ownership rights is regulated in Book II of the Civil Code, which is where the Inheritance Law is finally contained in Book II of the Civil Code (Meliala, 2018).

There are two kinds of civil law systematics, namely systematics based on science (doctrine) and systematics based on legislators (*wetgever*). In scientific systematics, civil law is divided into four including the law of People, Family Law Property Law, and Inheritance Law (Simanjuntak, 2015). Meanwhile, civil law is divided into four books. First Book talks about people, Second Book Discusses material, Third Book discusses engagement, and Fourth Book discusses proof and expiration (Saija et al., 2016).

The field of personal law and family law in this scientific systematic is regulated in the first book according to the systematics of the legislators, the property law contained in scientific systematics is regulated in the second book and also the third book. While the law of inheritance is in the second book. Then the law of proof is a part of procedural law in general. Several sections of civil procedural law regulate several rights and obligations that are delegated to both parties in a civil procedure, namely elements of material nature (Meliala, 2014).

Civil inheritance law or known as western inheritance law is a law that applies to non-Muslim communities, including Indonesian citizens of descent, Chinese or European whose provisions are governed by the Civil Code. This civil inheritance law adheres to an individual system, in which each aristocrat gets the inheritance according to their respective share. This inheritance law is regulated in Book II of the Civil Code, with three hundred articles governing inheritance, starting from article 830 to Article 1130 of the Criminal Code. This inheritance law is a law that regulates the assets left by someone because of death, the assets will be transferred to the heirs (Trisnawati, 2019).

There are two kinds of heirs regulated in the Civil Code, the heirs based on marital relations and blood relations (*ab intestato*), and heirs based on wills (*testamentary*). *Ab intestato* heir is regulated in article 832 of the Criminal Code,

which states that the person entitled to become heir is a blood relative, whether legal or out of wedlock, and the husband and wife. If neither of them is present, then the right on the inheritance and the heir is the State. These heirs are divided into four groups (Hamid, 2014):

First Group, The heirs of this first group include the family in a straight line down. This bottom line includes children and their descendants, and husband or wife. *Second Group*, The heirs of this second group include parents and siblings of the heir, both male and or female, along with their descendants. For parents, there are special regulations that regulate and guarantee that their share will not be less than a quarter of the inheritance of the heirs left behind, even though they inherit together with the heir's siblings. *Third Group*, The heirs of this third group include grandfathers and grandmothers, along with the next ancestor of the heir. *Fourth Group*, The heirs of this fourth group include family members through the sideline and other relatives up to the sixth.

The classification of heirs is aimed to know the priority of the order in receiving the inheritance. It means that the heirs who fall into group two cannot inherit the inheritance from the heir if the heirs of group one still exist (Purnamasari, 2012). To become an heir, there are some requirements must be fulfilled and also receive an inheritance. They are the testator has died or passed away, the heir must be present when the testator dies, and the heir must be capable and also has the right to inherit. The heir is not declared as an ineligible person to inherit due to death, nor is he/she is considered incompetent to become an heir (Misaelandpartners.com, 2020).

Testamentary heirs are heirs who have rights and will also be given rights to the inheritance left by the heir, utilizing proof of the existence of a will. This testamentary heir is regulated in Article 874 of the Criminal Code. The form of a will is also divided into three groups (Sari, 2014):

Olographic Will, This olographical will is made and also written by the testator. This will must be fully written and also signed directly by the testator. Then the will is stored with a notarial protocol. After the deed of the deposit is made by a notary and has been signed by the testator, witness, and also a notary, the will is valid and has the same power as a general will (Sari, 2014). In the process of storing this olographical will, a Notary does not directly act as an appearance, this is because the Notary acts as the party who receives and also keeps this type of olographical will which is submitted directly by the testator to the appointed Notary (Gandawidjaja, 2009).

General Will, A general will is a letter made by the testator in the presence of a notary. This will is the most common form of will and is more recommended than other types of wills, because the position of the notary here is an expert in this field, and they are obliged to provide guidance and also instructions (Sari, 2014). The general will is made by expressing his wishes and will verbally to a notary. After the testator has announced his final will, the notary will then read

out the results of the will in the presence of witnesses and confirm whether the will is correct or not. Therefore, deaf and dumb people cannot make a general will. After confirming that all the contents of the will are correct, the notary will then make a deed to be signed by the testator, notary, and also the witnesses (Agustina, 2020).

Secret Will, This secret will be made directly by the testator and then handed over to the notary in a sealed state. The notary who receives the will must make a deed of experience or better known as a superscriptie which is attended by four witnesses (Boyoh et al, 2021).

Several rules make an heir lose their inheritance rights or are not entitled to receive an inheritance even though the person is entitled to the inheritance either absentantio or testamentary. In the Criminal Code, several provisions have been made that regulate and determine an heir is deemed inappropriate to receive an inheritance (Putri, 2019):

Firstly, The person has received a judge's decision because he was found guilty and sentenced on the grounds of being involved in killing and or trying to kill the testator as contained in Article 838 paragraph 3. *Secondly*, The person embezzles, destroys, and falsifies a will or testament by using force and has prevented the testator from making a will according to his will as regulated in Article 838 paragraph 3 of the Criminal Code. *Thirdly*, The person gets a judge's decision because he is proven to have slandered a person who has died and has also committed a crime so that he is threatened with a sentence of five years in prison or more as regulated in Article 838 paragraph 2 of the Criminal Code. *Fourthly*, The person commits an act of embezzlement, destruction, or falsification of the testament of the testator as regulated in Article 838 paragraph 4 of the Criminal Code.

Inheritance Distribution System Based on the Perspective of Matrilineal Lineage in Minangkabau Tribe

This matrilineal lineage system is a system in which members of the community draw their lineage up through the mother's side, from the mother, until a woman who is considered her ancestor. In the kinship structure of the society that uses the matrilineal lineage system, the daughters are entitled to become heiresses, and the sons are not the heirs of the family. The position and strata of daughters as an heiress in the family are certainly different from the position of sons as heirs in patrilineal lines. In this line of patrilineal customs, according to Teer Haar, the position of the son is vaderrechtelijke ordering or based on the father's law, which means that everything is controlled by the paternal system. Meanwhile, the matrilineal lineage system contains modererechtelijke grouping, which means that everything is controlled by the maternal group. So, not only do these female heiresses control and manage the inheritance left behind but also they will be accompanied by the brothers and sisters of their families. This matrilineal kinship system is applied to the

Minangkabau tribe. The Minangkabau tribe adheres to a women's collective inheritance system for high inheritance. All daughters who are blood-related are heiress their descendants' inheritance whose ownership will not be divided. But the highest power is still regulated by the Mamak (head) of the inheritance who regulates the rights to use it. However, the distribution of the in the low inheritance, one of which is the income of the parents, conceptually the property will be an inheritance which is divided in half by the husband or wife. It is because this livelihood property is a joint property obtained during the marriage period. The division of low inheritance has a different inheritance system from high inheritance. The distribution of low inheritance, especially the parental assets for their children, based on customary law in Minangkabau, it is stated that if the inheritance of the heir comes from their respective livelihood assets, both sons and daughters have the right and also the same position to be an heir (Ziqra, 2018).

The high heirloom assets of a people are prohibited from being transferred from their original tribe, and the inheritance system cannot be interrupted but must be passed from generation to generation from Mamak or uncle to nephews. Based on customary rules in the Minangkabau tribe, those who are categorized as nephews are as follows (Taher, 2006):

Kemenakan Bertali Darah. They are the children of a sister based on her mother's lineage. *Kemenakan Bertali Adat*. They are the children of other people who are close enough and live in the same place. *Kemenakan Bertali Budi*. It means other people's children who often come and visit under the protection of a penghulu (leader). *Kemenakan Dibawah Lutuik*. They are the children of people who do not have clarity and are also descendants of servants (slaves) and live as members of the relatives.

The four types of classification of nephews above, ten predecessor generations and ten successor generations of *Kemenakan Bertali Darah* can be the heirs. the nieces and nephews will have the right to prevent the actions of the Mamak as the head of the heir to the inheritance that is not approved by them. Meanwhile, several other types of nephews, such as those with customary ties, ties of manners, and also under this lutuik are not considered heirs (Wahyuni, 2021).

This Minangkabau custom prioritizes and gives full attention to women. The reason is that women are considered the weakest people compared to men. Therefore, the Minangkabau tribe gives special rights to every woman. It is to maintain security and prosperity in the Nagari (village), as well as to protect women's rights when a woman becomes a widow. It is in aby customary adage that exists in the Minangkabau tribe, a husband and wife will experience a problem between the two, namely "elok tampek babaua, Kok buruak tampek bacarai". It means that the husband and wife are compatible and must also agree and both will continue to hang out, of course, but if a dispute arises between the two, it will be ended.

Indonesian Inheritance System Based on Gender Equality Perspectives

Gender is a classification between men and women who are grouped based on values and behavior. Gender itself comes from the word "Genus" which means type. Gender is a trait and behavior connoted to men and women which is formed based on social and cultural aspects. Gender is defined as a condition in which humans are born biologically between male or female, then they are grouped according to the characteristics that have been set in social society. This grouping is done by characterizing. Men are identical with masculine attributes, and women are identified with feminine attributes. This characterization or grouping is supported by the values and symbols that exist in the community (Kemenpppa, 2017).

Gender equality is a condition that shows the social strata between men and women are equal, harmonious, and balanced. The condition for realizing gender equality is through fair social treatment between men and women. In Indonesian law, the division of inheritance rights has been determined in the Civil Code. Then there is the law of inheritance distribution in customary law. In terms of inheritance distribution according to custom, this is closely related to the form of society and also the nature of kinship. In Indonesia, the family system relies on lineage. There are three types of hereditary systems (Ismail et al., 2019):

Patrilineal System

The patrilineal system is a hereditary system that draws a lineage from the father's side (patriarch) or male ancestors. This system affects the giving of tribes or clans to children and also their lineage, inheritance systems, and so on. In Indonesia, most of them adhere to this patrilineal kinship system, including the Batak, Ambon, Irian Jaya, Javanese, Balinese, Gayo Lands. In this inheritance system, the position and influence of a man are most important, men are the only heirs. The position of a daughter in this matrilineal kinship line, if she is married or "honestly married", the daughter will be included as a member of the family from her husband's side, and because of this, she will not become an heir of her parents if she dies. The heirs in this patrilineal kinship system are father, adopted son, father, mother, and siblings of the heir, close family to a certain degree, and customary alliance.

Matrilineal System

The matrilineal system is a system of descent that is taken through the mother's lineage to the female ancestor. In this matrilineal kinship system, men will not be heirs to their children, but the heirs will be either the female line or the lineage from the mother, because the children are part of the mother's family, while the father is still a member of his own family. With this matrilineal system, all their children only inherit and/or become heirs from their mother, whether in the distribution of high inheritance or low inheritance. If the deceased is a father, then his children and his wife will not be heirs in the high inheritance property belonging to her husband's family, and the heirs will be his nephews. This

maternal line system is applied in the Minangkabau, Enggano, and also Timorese. The customary inheritance law in this matrilineal lineage is different and has its uniqueness compared to most other inheritance systems in Indonesia. The inheritance system according to this matrilineal lineage, everyone will connect himself to a mother until he reaches the level of a woman who is considered his ancestor, where there is a mother's gene and they consider it part of them (one tribe), namely from his mother's lineage.

Parental or Bilateral System

The parental system or better known as bilateral is a lineage system that gives equal rights between male and female heirs, husband or wife, son or daughter, including the family of the male party, men and women. In this bilateral system, it is described that a boy and a girl have the same rights in terms of getting the inheritance left by their parents, even including those who have the status of a widower whose development is also included in the inheritance that feels reciprocal. This bilateral system is a fusion of the two lineage systems, the patrilineal line system, and also the matrilineal line. The point here is that in terms of the distribution and granting of inheritance rights between men and women, they are equal or equal, they get an equal share without being differentiated in the slightest, to get the inheritance from their parents

E. CONCLUSION

In this article, the authors discussed some inheritance laws in Indonesia, including Islamic law, the Indonesian Criminal Code, and Minangkabau customary law and their relations to gender equality. There are some similarities in terms of the laws and procedures for the distribution of inheritance. One of them is that the testator must die, and the main heirs are people who have blood ties to the decedent. The main heirs for each law are children, spouse (husband or wife), then parents. However, the difference lies in the proportion of inheritance and the priority of heirs. In Islamic law, men receive more than women. Meanwhile, based on the Indonesian civil code, the proportions received by men and women are equal. In Minangkabau matrilineal customary law, the proportion of inheritance is distinguished between high inheritance and low inheritance. High inheritance, which is hereditary property, will be given to women entirely as heiress, while low inheritance (wealth resulting from parents) will be distributed equally between men and women. In terms of gender equality, unequal proportions can be considered an injustice. However, based on the Islamic perspective, men hold a higher responsibility so that they get a higher share because of their responsibilities to their families including women. Meanwhile, based on Minangkabau matrilineal customs, women are considered weak creatures so they need to be protected.

References

- Agar, M. (2009). Notes from a professional speech delivered in a seminar at Ohio State University in December 2009.
- Agustina, M. S. (2020). Tinjauan hukum surat wasiat dalam penyerahannya oleh orang lain ke notaris. [Legal review of wills in submission by another person to a notary]: *Yustitiabelen*, 6(1), 48-68.
- A-Karim, A. K. M. (2021). Problematika hukum kewarisan Islam kontemporer di Indonesia. Publikasi IAIN Batusangkar. <https://repo.iainbatusangkar.ac.id/xmlui/handle/123456789/20036>
- Akbar, A. (2012). Konsep kepemilikan dalam Islam. [The concept of ownership in Islam]: *Jurnal Ushuluddin*, 18(2), 124–140.
- Amalia, E., & Az Zafi, A. (2020). Penyetaraan gender dalam hal pembagian warisan [Gender equality in inheritance sharing]: *AHKAM*, 8(2), 213–232.
- Assyafira, G. N. (2020). Waris berdasarkan hukum Islam di Indonesia. [Inheritance based on Islamic law in Indonesia]. *Al-Mashlahah: Jurnal Hukum Islam Dan Pranata Sosial Islam*, 08(01), 68–86.
- Atmowardoyo, H. (2018). Research methods in TEFL studies: descriptive research, case study, error analysis, and R & D: *Journal of Language Teaching and Research*, 9(1), 197–204.
- Aziz, A. (2021). Perspektif nilai-nilai budaya lokal dan hubungannya dengan agama [The perspective of local cultural values and their relationship with religion]. <https://www.iainpare.ac.id/opini-perspektif-nilai-nilai-budaya-lokal-dan-hubungannya-dengan-agama/>
- Bachtiar, M. (2012). Hukum waris Islam dipandang dari perspektif hukum berkeadilan gender. [Islamic Inheritance law viewed from the perspective of gender equitable law]: *Jurnal Ilmu Hukum Riau*, 3(1), 1–43.
- Barlinti, Y. S. (2013). Inheritance legal system in Indonesia: A legal justice for people: *INDONESIA Law Review*, 1(1), 23–41.
- BBC. (2016). Masyarakat matrilineal terbesar dunia ada di Sumatra Barat [The world's largest matrilineal community is in West Sumatra]. https://www.bbc.com/indonesia/karangan_khas/vert_tra/2016/10/16_0927_vert_tra_minangkabau
- Boyoh, N., Palandeng, E.R., Sondakh, J. (2021). Kekuatan hukum surat wasiat sebagai bukti kepemilikan tanah warisan yang sah menurut Undang-Undang Hukum Perdata. [Legal strength of will as proof of legal inheritance land ownership according to the Civil Code]: *Lex Privatum*, 9(4). 98-108.
- BPS. (2021). Hasil Sensus Penduduk 2020 [2020 Population Census Results]. <https://www.bps.go.id/pressrelease/2021/01/21/1854/hasil-sensus-penduduk-2020.html>
- Davis-Kean, P. E., & Jager, J. (2017). The BERA / SAGE handbook of educational research : two volume set. an introduction to the importance of research

- design. SAGE Publications Ltd. <https://doi.org/http://dx.doi.org/10.4135/9781473983953.n25>
- Gall, M. D., Borg, W. R., & Gall, J. P. (2006). *Educational research: An introduction* 8th ed Allyn and Bacon White Plains.
- Gandawidjaja, K. (2009). Kewenangan notaris membuat akta penyimpanan surat wasiat olografis. [Authority of a notary to make a deed of storage of an olographic will]. Thesis. Program Studi Magister Kenotariatan, Fakultas Hukum, Universitas Airlangga. Suarabaya.
- Hamid, M.A. (2014). Tinjauan yuridis atas ahli waris pengganti dalam hukum waris. [Juridical review of substitute heirs in inheritance law]. *Legal Pluralism: Journal of Law Science*, 4(2), 165-190.
- Hammarberg, K., Kirkman, M., & De Lacey, S. (2016). Qualitative research methods: When to use them and how to judge them: *Human Reproduction*, 31(3), 498–501.
- Haries, A. (2014). Analisis Tentang Studi Komparatif Antara Hukum Kewarisan Islam dan Hukum Kewarisan Adat. [Analysis of Comparative Studies Between Islamic Inheritance Law and Customary Inheritance Law]: *Fenomena*, 6(2), 217–230.
- Harisuddin, M. N. (2015). Pemikiran feminis muslim Di Indonesia tentang fiqh perempuan [Muslim feminist thoughts in Indonesia about women's fiqh]. *Al-Tahrir: Jurnal Pemikiran Islam*, 15(2), 237.
- Hasan, M. A. (1979). *Hukum Warisan dalam Islam*. [Inheritance Law in Islam]. Bulan Bintang. Jakarta.
- Hasan, S., Sumitro, W. (1994). *Hukum Islam Di Indonesia*. [Islamic Law in Indonesia]. Usaha Nasional. Surabaya.
- Hasanuddin. (2017). Nilai dan karakter budaya. [Cultural values and character]. *Dialog Budaya Nasional*, 1–13.
- Hazairin. (1964). *Hukum Keawarisan Bilateral Menurut Alquran*. [Bilateral Inheritance Law According to Qur'an]. Tinta Mas. Jakarta.
- <https://www.kemenpppa.go.id/index.php/page/read/31/1439/mencapai-kesetaraan-gender-dan-memberdayakan-kaum-perempuan%20pada%2025%20Desember%202021>
- Husada, H. (2016). Islamisasi nusantara (analisis terhadap discursus para sejarawan). [Islamization of the Nusantara (Analysis of historian's discourse)]: *Jurnal Adabiya*, 18(35), 17–28.
- Ismail, H, Asy'ari, H, Setiawan, A. (2019). Hak waris anak laki-laki tertua dalam hukum adat lampung pepadun perspektif gender (Studi di Tegineng Kabupaten Pesawaran). [The inheritance rights of the oldest boy in the customary law of Lampung Pepadun from a gender perspective (Study in Tegineng, Pesawaran Regency)]. 56-67. <http://dx.doi.org/10.30983/alhurriyah.v4i1.938>

- Jain, Payal K., Hazenberg, R., Seddon, F., Denny, S. (2020). Social Value as a mechanism for linking public administrators with society: identifying the meaning, forms, and process of social value creation: *International Journal of Public Administration*, 43(10), 876–889.
- Jayadi, S. (2022). Local Wisdom As Social Cohesion Of “Kebhinekaan” The Study Of Hindu-Islamic Relations In Eastern Indonesia. *Jurnal Penelitian Agama Hindu*, 6(2), 129-136.
- Jayadi, S., & Rahmawati, R. (2020). Sasak Community's Communicative Act in Ngelukar and Ngilahan Kaoq Rite in Lombok. *Al-Balagh: Jurnal Dakwah Dan Komunikasi*, 5(2), 295-312.
- Johnston, M. P. (2014). Secondary data analysis : a method of which the time has come. *qualitative and quantitative methods in libraries (QQML)*, 3(April), 619–626.
- Karim, M. A. (2012). Problematika Hukum Kewarisan Islam Kontemporer Di Indonesia. [Contemporary islamic Inheritance Law problems in Indonesia]. (M. Karim (ed.); 1st ed., Vol. 15, Issue 1). Badan Litbang dan Diklat Kementerian Agama RI.
- Khisni, A. (2017). Hukum waris Islam. [Islamic Inheritance Law]. Unissula Press. Semarang.
- Kitto, S. C., Chesters, J., & Grbich, C. (2008). Quality in qualitative Research: Criteria for authors and assessors in the submission and assessment of qualitative research articles for the Medical Journal of Australia: *MJA*, 188(4), 243–246.
- Lubis, H. R. (2017). Sosiologi Agama: Memahami Perkembangan Agama dalam Interaksi Islam. Kencana.
- Lubis, H. R. (2017). Sosiologi Agama: Memahami Perkembangan Agama dalam Interaksi Islam. Kencana.
- Manzilati, A. (2017). Metodologi Penelitian Kualitatif: Paradigma, Metode, dan Aplikasi. Universitas Brawijaya Press.
- Meliala, D.S. (2014). Hukum Perdata dalam perspektif BW. [Civil Law in BW Perspective]. Penerbit Nuansa Aulia. Bandung.
- Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia. (2017) Mencapai kesetaraan gender dan memberdayakan kaum perempuan. [Achieving gender equality and empowering women].
- Miseal & Partners. (2020). Golongan waris menurut hukum waris barat. [Inheritance group according to western inheritance law]. <http://misaelandpartners.com/golongan-waris-menurut-kuhper/>
- Morse, J. M., & Richards, L. (2002). Review of 'readme first for a user's guide to qualitative methods. in *forum: qualitative social research* - University of Southampton UK (Vol. 5, Issue 1). Sage.

- Na'im, A., Syaputra, H. (2011). Kewarganegaraan, suku bangsa, agama, dan bahasa sehari-hari penduduk Indonesia. [citizenship, ethnicity, religion, and everyday language of Indonesians]. BPS.
- Nassaji, H. (2015). Qualitative and descriptive research: Data type versus data analysis: *Language Teaching Research*, 19(2), 129–132.
- Nawawi, M. (2016). Pengantar hukum kewarisan Islam. [Introduction to Islamic inheritance law]. Pustaka Radja.
- Purnamasari, I.D. (2012, December 14). Empat golongan ahli waris menurut KUH Perdata. [The Four Classes of Heirs According to the Civil Code]. Hukumonline.
<https://www.hukumonline.com/klinik/detail/ulasan/lt4ecc7cf50640b/empat-golongan-ahli-waris-menurut-kuh-perdata>
- Putri, Ira D., Amelisca, D., Nengsih, S. (2019). Pewarisan menurut hukum waris Islam terhadap sistem kekerabatan matrilineal Minangkabau. [Inheritance according to Islamic Inheritance law to the Minangkabau matrilineal kinship system]: *Notaire*, 2(2), 197–212.
- Ramulyo, M. . (1994). Perbandingan pelaksanaan hukum kewarisan islam dengan kewarisan menurut kitab undang-undang hukum perdata (BW) (2nd ed.). [Comparison of the implementation of Islamic inheritance law with inheritance according to the Civil Code (BW) (2nd ed.)]. Sinar Grafika.
- Rantung, C. M. (2018). Hilangnya hak seorang ahli waris menurut kitab Undang-undang Hukum Perdata. [Loss of rights of an heir according to the Civil Code]: *Lex Privatum*, 7(9), 169–179.
- Ridwan, R., Dimiyati, K., & Azhari, A. F. (2016). Perkembangan dan eksistensi hukum adat: dari sintesis, transplantasi, integrasi hingga konservasi [development and existence of indigenous law: from synthesis, transplantation, integration to conservation]: *Jurnal Jurisprudence*, 6(2), 106–115.
- Sagala, E. (2018). Hak mewaris menurut ketentuan hukum waris perdata [Inheritance rights according to the provisions of civil inheritance law]. 06(01), 116–124.
- Said, H. A. (2013). Dekonstruksi syariah: menggagas hukum waris perspektif jender. [Sharia deconstruction: initiating inheritance law from a gender perspective]: *Al-'Adalah*, 11(1), 17–32.
- Saija, R., Letsoin, R.F.X.V. (2016). Buku ajar hukum perdata. [Civil law textbook] Penerbit Deepublish. Yogyakarta.
- Sakirman. (2016). Konvergensi pembagian harta waris dalam hukum Islam [Convergence of the division of inheritance in Islamic Law]: *Al-'Adalah*, XIII(2), 155–164.
- Sandelowski, M. (1986). The problem of rigor in qualitative research. *ANS: Advances in Nursing Science*, 8(3), 27–37.

- Sari, Indah. (2014). Pembagian hak waris kepada ahli waris ab intestato dan testamentair Menurut Hukum Perdata Barat (BW). [Distribution of inheritance rights to the heirs of Ab Intestato and Testamentair according to Western Civil Law (BW)]: Jurnal Ilmiah Hukum Dirgantara, Fakultas Hukum Universitas Suryadarma, 5(1). 1-20.
- Simanjuntak, P.N.H. (2015). Hukum perdata Indonesia. [Indonesian Civil Law] Penerbit Kencana. Jakarta
- Sulistyowati, Y. (2020). Kesetaraan gender dalam lingkup pendidikan dan tata sosial [Gender equality in the scope of education and social order]: Indonesian Journal of Gender Studies, 1(2), 1–14.
- Suparman, E. (2007). Hukum waris Indonesia: dalam perspektif Islam, adat, dan BW. [Indonesian inheritance law: in the perspective of islam, customs, and BW]. PT Refika Aditama. Bandung.
- Sutanto, H., & Tanuwidjaja, T. H. (2017). Kedudukan ahli waris terhadap harta warisan seseorang yang diduga meninggal dunia (keadaan tidak hadir). [Position of the heirs concerning the inheritance of a person who is suspected of death (state of absence)]: Perspektif, 22(3), 231–237.
- Syarifuddin, A. (2004). Hukum kewarisan Islam. [Islamic inheritance Law]. Kencana.
- Thaher, A. (2006). Sistem pewarisan kekerabatan matrilineal dan perkembangannya di Kecamatan Banuhampu pemerintahan Kota Agam Propinsi Sumatera Barat. [Matrilineal inheritance system and its development in Banuhampu District, Agam City Government, West Sumatra Province]. Thesis. Program Studi Magister Kenotariatan, Universitas Diponegoro. Semarang.
- Trisnawati, P. A. (2019). Pembagian waris berdasarkan KUH Perdata. [Distribution of inheritance based on the Civil Code]. Persekutuan Doni Budiono & Rekan. <https://pdb-lawfirm.id/pembagian-waris-berdasarkan-kuh-perdata/>
- UNESCO. (2021). What is Intangible Cultural Heritage? <https://ich.unesco.org/en/what-is-intangible-heritage-00003>
- Wahyuni, A. (2018). Sistem waris dalam perspektif Islam dan Peraturan Perundang-undangan Di Indonesia. [Inheritance system in Islamic perspective and legislation in Indonesia]: SALAM: Jurnal Sosial Dan Budaya Syar-I, 5(2), 147–160.
- Wahyuni, S. (2021). Ketentuan harta waris pusaka tinggi Minangkabau tinjauan hukum Islam (Analisa Putusan Nomor 2306 K/Pdt/2011). [Provisions on Minangkabau high heritage inheritance overview of Islamic law (Analysis of Decision Number 2306 K/Pdt/2011)]. Undergraduate Thesis. Program Studi Perbandingan Mahzab, Fakultas Syariah Dan Hukum, Universitas Islam Negeri Syarif Hidayatullah. Jakarta
- Wirasandi. (2019). Wanita dalam pendekatan Feminisisme [Women in Feminism approach]: Journal Ilmiah Rinjani, 7(2), 47–58.

- Yanti, W. (2014). Memahami peranan perempuan suku Minang perantauan dalam menjaga dan meneruskan komunikasi budaya matrilineal [Understanding the role of overseas Minang women in maintaining and continuing matrilineal cultural communication]: *The Messenger*, 6(2), 97.
- Ziqra, Y. (2018). Pelaksanaan pembagian harta warisan untuk anak terhadap harta pusaka rendah pada masyarakat hukum adat Minangkabau di perantauan. [Implementation of the distribution of inheritance assets for children to low inheritance assets in Minangkabau customary law communities in overseas]. Undergraduate Thesis. Departemen Hukum Keperdataan Program Kekhususan Hukum Perdata BW, Fakultas Hukum, Universitas Sumatera Utara. Medan.