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## Inheritance Law Study, Understanding Inheritance Without a Will: What Happens If There is No Will?

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### **Abstract**

*This study aims to analyze the mechanism of inheritance without a will in the pluralistic Indonesian legal system, which includes Islamic law, Western civil law, and customary law. The research method used is a qualitative approach with literature study techniques through analysis of various sources such as legislation, legal textbooks, academic journals, and previous research results relevant to the topic of inheritance without a will. The results of the study indicate that each legal system has a different mechanism in regulating inheritance without a will, where Islamic law applies the imperative faraid system with distribution based on the position of the heir, Western civil law uses a class system with the principle of saisine and equal distribution for all children, while customary law relies heavily on the kinship system adopted by the local community. This pluralism of inheritance law provides options but also creates legal uncertainty and potential conflict, so it is necessary to increase public legal awareness regarding the importance of inheritance planning through wills as well as legal reform to harmonize various systems while still respecting cultural diversity and upholding the principles of justice and gender equality.*

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**Keywords:** *Inheritance Law, Inheritance Without a Will, Legal Pluralism, Islamic Law, Customary Law.*

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### **Introduction**

Inheritance law is a branch of civil law that regulates the transfer of a deceased person's assets to their heirs. This regulation plays a fundamental role in maintaining order and justice in society. In the Indonesian context, the inheritance law system is pluralistic because three legal systems apply simultaneously: Islamic inheritance law, customary inheritance law, and Western civil inheritance law, as stipulated in the Civil Code (Hazairin, 1982).

Inheritance without a will, known as ab intestato inheritance, is the most common inheritance mechanism in Indonesian society, given that public awareness of making a will is still relatively low and it is often considered taboo due to its association with death (Damanhuri, 2012). The complexity of inheritance law in Indonesia increases when the testator does not leave a will, so the distribution of the inheritance must comply with applicable legal provisions according to the religion and

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legal system adopted by the testator and their heirs.

Issues related to inheritance without a will often lead to conflict among heirs due to differing understandings of the rights and obligations of each party in the distribution of the inheritance. According to Eman Suparman (2005), the lack of clarity regarding who is entitled to inherit and what portion each heir should receive is a major source of dispute within families, especially in families with complex structures with children from different marriages or the presence of substitute heirs. In Islamic law, which applies to the majority of the Indonesian population, the system of inheritance without a will is regulated in detail in the Quran and Hadith, which were then codified in the Compilation of Islamic Law, which contains basic principles such as *ashabah* and *dzawil furudh* that determine the share of each heir (Amir Syarifuddin, 2004). On the other hand, societies subject to Western civil law follow the *legitime portie* system that provides protection to heirs in a straight line through an absolute share mechanism that cannot be reduced even by a will, while customary law has a wide variety depending on the nature of kinship adhered to, such as patrilineal, matrilineal, or parental (Soerojo Wignjodipoero, 1995).

Research conducted by Rofiq (2015) analyzed the practice of inheritance distribution without a will from the perspective of Islamic law in Indonesia, focusing on the implementation of the *faraid* system which mathematically regulates each heir's share based on their position and kinship relationship with the testator. The study found that although Islamic law has provided clear guidelines, in practice there is still a gap between normative provisions and implementation in the field, mainly due to the influence of local culture which tends to prioritize family deliberation and sometimes ignores legally binding provisions. Rofiq also emphasized that inadequate understanding of

the Islamic inheritance mechanism causes many families to distribute inheritance inappropriately, some even giving a larger portion to sons on the grounds of patriarchal culture without understanding the philosophy behind the 2:1 distribution in Islamic law which actually considers the burden of economic responsibility.

Meanwhile, Hadikusuma's (2015) research explored the dynamics of customary inheritance law in various regions of Indonesia in the context of inheritance without a will. It found that the customary inheritance system has high flexibility but also creates legal uncertainty due to the lack of uniform codification. Hadikusuma explained that in the Minangkabau traditional society, which adheres to a matrilineal system, high inheritances cannot be inherited by children but rather by nephews from female relatives. Meanwhile, in the patrilineal Batak society, only sons have the right to inheritance, and daughters only receive a share in the form of voluntary gifts or certain objects.

Furthermore, a study conducted by Djaren Saragih (2013) on the implementation of Western civil inheritance law in Indonesia shows that the inheritance system based on the Civil Code provides higher legal certainty with a clear order of heir classes. However, this system is less accommodating to the strong kinship values in Indonesian culture and is often ignored by communities who prefer to resolve inheritance distribution amicably even though they are legally subject to Western civil law.

Although numerous studies have examined inheritance systems from various legal perspectives, there remains a lack of comprehensive research on how pluralism in inheritance law in Indonesia interacts with the practice of inheritance without a will, particularly in families with diverse legal backgrounds or in cases of mixed marriages. Previous studies have tended to focus on one

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legal system in isolation without analyzing the implications of available legal options and how Indonesian society navigates this complexity when no will is left by the testator. In reality, however, there are often conflicts between formal legal provisions and prevailing social practices.

The novelty of this study lies in its attempt to integrate understanding of the three inheritance law systems in Indonesia in the context of inheritance without a will, by analyzing not only the normative aspects of each system but also the sociological dimensions of how society chooses and applies a particular legal system to resolve inheritance issues. This study will provide a theoretical contribution to understanding the dynamics of pluralism in inheritance law in Indonesia and provide practical recommendations for increasing public legal awareness regarding the importance of inheritance planning and harmonizing the application of inheritance law, which can reduce the potential for conflict among heirs.

In the realities of Indonesian society, inheritance without a will remains a dominant phenomenon due to various factors such as low legal literacy, the belief that discussing death and the distribution of assets will bring disaster, and the belief that children will be able to settle the inheritance fairly without the testator's intervention through a will. Data from various courts shows that inheritance disputes continue to increase annually, with the majority of these cases originating from the absence of a will, which creates uncertainty regarding the testator's wishes and triggers differing interpretations among the heirs regarding their rights and shares. This phenomenon is further complicated when the testator owns diverse assets, such as land, property, shares, and digital assets, each of which has different transfer mechanisms. Also, when the family structure

includes children from previous marriages, adopted children, or heirs residing abroad.

The issue of inheritance without a will is also closely related to the issue of gender equity in inheritance distribution, particularly in the context of Islamic law and customary law, which in practice often place women at a disadvantage compared to men. Although legally women have inheritance rights guaranteed by law, in social practice there are still many cases where women do not receive their rights or even voluntarily relinquish their rights due to social or cultural pressures that consider men to have more rights to family inheritance. This condition requires serious attention from various parties including the government, educational institutions, and civil society organizations to increase public understanding of fair inheritance rights and the importance of documenting the will of the testator through a will to prevent conflict and ensure that each heir receives their rights in accordance with applicable legal provisions.

## Method

This research uses a qualitative approach with a literature study method that focuses on an in-depth analysis of various literature sources relevant to inheritance law and inheritance without a will in Indonesia. A qualitative approach was chosen because it allows researchers to understand the phenomenon of inheritance law comprehensively by exploring the meaning, interpretation, and social context behind inheritance practices in society (Creswell, 2014).

The literature study method or library research is a data collection technique by reviewing and analyzing various written sources such as books, scientific journals, articles, laws and regulations, and other documents related to the research topic to gain a theoretical and empirical understanding of the problem being

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studied (Zed, 2008). Through this approach, researchers can identify patterns, themes, and relationships between concepts in the existing literature and develop a holistic understanding of the inheritance system without a will in the context of legal pluralism in Indonesia.

The data in this study were collected from various primary and secondary sources including laws and regulations such as the Civil Code, the Compilation of Islamic Law, Law Number 5 of 1960 concerning Basic Agrarian Principles, and various court decisions related to inheritance disputes. Secondary sources include inheritance law textbooks, peer-reviewed academic journals, previous research results, scientific articles published in the Google Scholar database, and other academic works discussing Islamic inheritance law, customary inheritance law, and Western civil inheritance law. The data analysis technique used is content analysis which involves the process of identifying, codifying, and categorizing the main patterns in the collected data (Krippendorff, 2018).

The analysis was conducted by critically reading all the collected literature, identifying key concepts, comparing perspectives from various sources, and synthesizing the findings to answer the research problem regarding the mechanism of inheritance without a will in various legal systems in Indonesia. The validity and reliability of the research were maintained through triangulation of data sources using various literature from different perspectives and time periods to ensure that the research findings were unbiased and reliable. The researcher also applied the principle of data saturation where data collection was stopped when no more significant new information could be obtained from additional literature sources (Morse, 2015).

In addition, the researcher conducted a critical

evaluation of the quality of the sources used by paying attention to the credibility of the authors, the reputation of the publishers, and the validity of the arguments put forward in each literature. The data interpretation process was carried out iteratively by repeatedly reading relevant literature, making reflective notes, and developing a conceptual framework that connects various findings from different literatures. The results of the analysis are then presented descriptively-analytically by presenting an in-depth description of the inheritance system without a will in the three legal regimes applicable in Indonesia, identifying similarities and differences between the systems, and analyzing the practical implications of inheritance law pluralism on people's lives.

## Result and Discussion

### Result

#### 1. The Mechanism of Inheritance Without a Will in Islamic Law

The system of inheritance without a will in Islamic law in Indonesia is regulated by sharia provisions codified in the Compilation of Islamic Law (KHI) through Presidential Instruction Number 1 of 1991. Inheritance occurs automatically upon the testator's death, and the inheritance must be distributed to the heirs according to the provisions of the faraid system. In the faraid system, heirs are divided into three main groups: those entitled to receive certain portions as stipulated in the Quran, such as half, one-quarter, one-eighth, one-third, one-sixth, and two-thirds; those entitled to receive the remainder of the estate after distribution to the others; and those entitled to receive the dzawil arham, who are substitute heirs when there are no heirs from the previous two groups (Fatchur Rahman, 1981).



This distribution mechanism is imperative and cannot be changed by the heir, even through a will, except within the limit of one-third of the assets that can be bequeathed to non-heirs. Therefore, when someone dies without a will, all of their assets will be distributed according to the provisions of faraid without considering the testator's wishes.

In the practice of inheritance without a will according to Islamic law, there are several fundamental principles that must be met before the inheritance distribution is carried out, namely fulfilling the testator's obligations such as funeral expenses, paying off the testator's debts, and executing the will, if any, within the maximum limit of one-third of the assets. Once these obligations are fulfilled, the remaining inheritance is distributed to the entitled heirs (Wahbah al-Zuhaili, 2011).

The Compilation of Islamic Law regulates in detail who is included as an heir and how much they are entitled to. Boys receive twice the share of girls, considering that men have the obligation to support their families, while women are not burdened with this obligation. If the testator leaves only one daughter, she receives half the share, and the remainder becomes the inheritance or returns to the daughter if there is no inheritance. If there are two or more daughters, they receive two-thirds of the share, divided equally among them.

A common problem in inheritance without a will under Islamic law is related to substitute heirs, or *plaatsvervulling*. The classical faraid system does not recognize the concept of substitute heirs, so grandchildren cannot replace their parents who have predeceased them.

However, Article 185 of the Compilation of Islamic Law accommodates the concept of substitute heirs by granting grandchildren the right to receive the share their parents would

have received, provided it does not exceed the share of an heir of equal standing with the parent they replaced (Amir Syarifuddin, 2004). This provision represents an *ijtihad* undertaken to provide justice to grandchildren left behind by predeceased parents, although in practice there is still disagreement among scholars regarding the validity of these substitute heirs. Apart from that, another problem that often arises is related to joint assets in marriage, where a separation must first be made between the joint assets, half of which belongs to the surviving spouse, and the inheritance assets which will be distributed to all heirs, including the spouse, according to their share as heirs.

## 2. Inheritance Mechanisms Without a Will in Western Civil Law

The intestate inheritance system, or *ab intestato*, in Western civil law applicable in Indonesia is regulated in the Civil Code (KUH Perdata), specifically in Book II concerning Property. Inheritance occurs upon death, and the inherited property automatically passes to the heirs by law without requiring express acceptance. Unlike the Islamic legal system, which distinguishes between joint property and inherited property, the Civil Code applies the principle of *saisine*, as stipulated in Article 833, which states that heirs automatically, by law, acquire ownership of all goods, all rights, and all receivables of the deceased (Ali Afandi, 2000).

This system provides a high degree of legal certainty because, upon the testator's death, the heirs immediately become the owners of the inherited property, even though no physical distribution has been made. Thus, there is no void in the ownership of the inherited property, which could create legal uncertainty or give others the opportunity to take possession of the property illegally. The Civil Code regulates four groups of heirs who are called in succession to receive inheritance in intestate





inheritance.

The first group consists of the longest-living husband or wife and their descendants, including recognized illegitimate children; the second group consists of the testator's parents and siblings; the third group consists of relatives in a direct ascending line after the father and mother; while the fourth group consists of family members in a lateral line up to the sixth degree (Subekti, 2003).

The principle that applies in this system is that the closer group will cover the more distant group, so that if there are heirs from the first group, the second, third, and fourth groups will not receive any share at all. In the first group, distribution is carried out on a per capita or per head basis, where each child receives an equal share without distinction of gender. If one child dies first, the share will be distributed to the children per stirpes or based on the parentage. This system reflects the principle of horizontal justice, where all children have equal standing before the law without discrimination based on gender or birth order.

One of the peculiarities of the inheritance system according to the Civil Code is the provision regarding *legitime portie* or absolute share regulated in Article 913 to Article 929, which provides protection to heirs in a straight line both downwards and upwards from the actions of the testator that can harm their rights through excessive gifts or wills. *Legitime portie* is a part of the inheritance that must be given to heirs in a straight line and may not be reduced by the testator even through a will or gift, where the size of this absolute share varies depending on the number of children left behind (Pitlo, 1979).

If the testator leaves one child then the *legitime portie* is half of the share that the child should receive in inheritance without a will, if leaving two children then the *legitime*

*portie* is two-thirds of the share, and if leaving three or more children then the *legitime portie* is three-quarters of the share. This provision aims to protect the interests of the closest heirs from the arbitrariness of the testator in transferring his assets to other parties, however in the practice of inheritance without a will, the concept of *legitime portie* becomes less relevant because all assets will be distributed in accordance with the provisions of the law without any reduction through a will or gift.

### 3. Intestate Inheritance Mechanisms in Customary Law

Intestate inheritance systems in customary law have highly diverse characteristics and vary from region to region in Indonesia, depending on the kinship system adopted by the local indigenous community, such as patrilineal, matrilineal, or parental, each of which has its own inheritance rules. In indigenous communities that adhere to patrilineal systems, such as the Batak, Balinese, and Ambonese, inheritance passes through the male line, with only sons entitled to receive inheritances from their parents, while daughters generally receive no share or only receive voluntary gifts in the form of certain items such as jewelry or money (Ter Haar, 1979).

Conversely, in matrilineal societies such as the Minangkabau, high heirlooms (*aka besar*), inherited property, are not passed down to children but to nephews or sisters' children. Thus, inheritance follows the maternal line and is controlled by the mother's uncle, or brother, who manages the inheritance for the benefit of all members of the clan. Meanwhile, societies that adhere to a parental or bilateral inheritance system, such as the Javanese and Malays, recognize a relatively fairer inheritance distribution, where both sons and daughters are entitled to receive inheritances from their parents. Although in practice, there is still often a disparity in the distribution of inheritance,

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with sons receiving a larger share.

In customary law systems, the concept of inheritance is not limited to the transfer of individual ownership rights to property but also encompasses social and communal dimensions, where inherited assets, especially land, are considered the joint property of the extended family or clan, which must be safeguarded and may not be transferred to outsiders without the consent of all family members. This principle is reflected in the concept of heirlooms in Minangkabau society, which distinguishes between high-ranking heirlooms, which cannot be sold or pawned except in emergencies, and assets acquired during marriage that can be distributed to children (Hadikusuma, 2003).

Inheritance mechanisms in customary law generally do not recognize mathematical divisions as in Islamic law or divisions based on class as in the Civil Code. Instead, they prioritize family deliberation and the principle of harmony in determining who has the right to manage and utilize inherited assets. In practice, inheritance distribution is often not carried out physically but only involves the distribution of usage rights or management rights, where the inheritance remains undivided and is used jointly by the heirs. It can also occur that one heir is appointed as the administrator of the inheritance for the benefit of all family members, with the obligation to provide benefits to the other heirs.

Problems that often arise in inheritance without a will under customary law relate to the legal certainty and protection of the rights of heirs, particularly female heirs, who in many customary systems are not treated equally with male heirs. Although the 1945 Constitution guarantees equal rights between men and women, in practice, customary law still frequently encounters gender discrimination in inheritance, where women are excluded from inheritance rights or receive only a much

smaller share than men, with various justifications such as women marrying and leaving the family or men having the responsibility of continuing the lineage and maintaining the family name (Soepomo, 1996).

The conflict between customary law and the principles of gender justice and human rights presents a unique challenge in the Indonesian legal system, where on the one hand there is recognition of the existence and validity of customary law as part of the nation's cultural identity, but on the other hand there are demands to protect the fundamental rights of every citizen without discrimination. In its development, several court decisions have begun to provide protection to women in customary inheritance by not fully applying discriminatory customary law, but this has not completely changed practices in society that still tend to maintain traditions that have been passed down from generation to generation even though they conflict with the principles of modern justice.

## Discussion

### 1. Inheritance Mechanism Without a Will in Islamic Law

The inheritance mechanism without a will in Islamic law that has been described in the research findings shows that the faraid system is an implementation of the principle of distributive justice in Islam which aims to provide legal certainty and protection of the rights of each heir according to their position and responsibilities in the family structure. According to the theory of justice in the Islamic perspective put forward by Yusuf Qaradhawi (2001), the distribution of inheritance with a ratio of 2:1 between men and women is not a form of discrimination but rather a reflection of the principle of balance between rights and obligations, where men in Islam are burdened with the obligation to provide for their wives



and children while the property received by women is entirely their personal right without the obligation to support the family.

The faraid system which is imperative and cannot be changed by the will of the testator is in line with the theory of legal positivism which emphasizes that the law must be based on clear and definite rules to provide predictability and consistency in its application (Hart, 1961). The Compilation of Islamic Law as a codification of Islamic law in Indonesia has succeeded in integrating sharia principles with the Indonesian socio-cultural context, although in practice there is still tension between normative provisions and community customs that prioritize family deliberation.

The application of the substitute heir system in the Compilation of Islamic Law is a form of adaptation of Islamic law to the sense of justice of Indonesian society who consider it unfair if grandchildren who are abandoned by their parents do not receive a share of the inheritance from their grandparents. From the perspective of progressive legal theory put forward by Satjipto Rahardjo (2006), this regulation of substitute heirs shows that the law must be responsive to the development of community needs and must not be rigid in facing new situations that require more just and humane legal solutions.

Mohammad Daud Ali (2006) explains that the concept of substitute heirs is actually not foreign in the treasury of Islamic law because it has been practiced by several Muslim countries such as Egypt and Tunisia through the mechanism of *wajibah* will, where grandchildren who do not receive a share because they are prevented by closer heirs are required to be given a will in the amount of the share that their parents should receive.

However, the implementation of substitute heirs in religious court practice in Indonesia still

faces various challenges, especially in terms of proving kinship relationships and determining the amount of the portion that should be received, and there are still differences in understanding among religious judges regarding the limits and conditions for the implementation of these substitute heirs. The problem of separating joint assets from inheritance assets in the Indonesian Islamic legal system reflects the complexity that arises from efforts to harmonize the applicable marriage law and inheritance law.

According to the theory of modern Islamic family law put forward by Khoiruddin Nasution (2013), the concept of joint assets or *syirkah* in marriage is a recognition of the wife's economic contribution to the household, both through domestic work and productive work, so that half of the joint assets become the absolute right of the wife and are not included in the inheritance that will be divided among all heirs. In judicial practice, there are often difficulties in proving which are included in joint assets and which are included in the assets brought by each partner, especially if there is no clear documentation regarding the origin of the assets (Yahya Harahap, 2009).

This problem becomes more complex when the testator has more than one wife from different marriages, requiring a separation of joint assets between each wife before determining the inheritance to be distributed among all heirs. This lack of clarity in the division of assets often leads to prolonged conflict among heirs and requires a complex court process to determine the legal status of each asset left by the testator.

## 2. Intestate Inheritance Mechanisms in Western Civil Law

The intestate inheritance system according to the Indonesian Civil Code, based on the principle of *saisine* and the class of heirs system, reflects the influence of Roman and





Napoleonic law, which emphasize legal certainty and the protection of individual property rights. According to the inheritance law theory put forward by Pitlo (1979), the *saïsine* principle, stipulated in Article 833 of the Indonesian Civil Code, is a manifestation of the principle of continuity of ownership, which aims to prevent a legal vacuum in inherited assets. This principle allows, from the moment of the testator's death, ownership of all assets automatically passes to the heirs without the need for a formal transfer or acceptance process.

This system differs fundamentally from the Islamic legal system, which requires the testator to fulfill their obligations before the inheritance can be distributed, and also from customary law systems, which emphasize joint control and utilization rather than individual ownership. J. Satrio (1992) explains that the principle of *saïsine* provides practical benefits in terms of protecting inheritance from third party claims and makes it easier for heirs to manage inheritance even though there has been no physical distribution, but on the other hand this principle can also cause problems when one of the heirs controls all the inheritance and is reluctant to share it with other heirs.

The division of heirs into four groups with a closed system in the Civil Code reflects the kinship hierarchy recognized in the Western legal system, where the nuclear family and families in a straight line have top priority in receiving inheritance compared to families in the lateral line. From the perspective of John Rawls's (1971) theory of justice which emphasizes the principle of equal opportunity, the inheritance distribution system in the Civil Code which provides equal shares to all children without distinguishing between gender or birth order is an implementation of the principle of equality and non-discrimination which are fundamental values in the modern legal system.

R. Subekti (2003) emphasized that the *per capita* system in the distribution of inheritance to the children of the testator reflects the recognition that every child has the same position in the eyes of the law and has the right to receive fair treatment from their parents, while the *per stirpes* system applied when one of the children has died first ensures that the grandchildren are not disadvantaged by the death of their parents and still receive the share that their parents should receive.

However, this rigid class system also raises criticism, especially regarding the non-recognition of the inheritance rights of illegitimate children who are not legally recognized, which in its development has undergone changes through the Constitutional Court Decision Number 46/PUU-VIII/2010 which states that children born outside of marriage have a civil relationship with their mother and their mother's family as well as with their father and their father's family as long as it can be proven based on science and technology. The concept of *legitieme portie* in the Western inheritance law system is an instrument of legal protection for heirs in a straight line from the arbitrariness of the testator in distributing his assets, which reflects the balance between the principle of freedom of will (testamentary freedom) and the principle of family solidarity.

According to the theory put forward by Ralph C. Brashier (2004), the concept of forced heirship or absolute share aims to ensure that the social function of inheritance as a guarantee of family welfare remains fulfilled and cannot be ignored by the individual desire of the testator to give his property to another party outside the nuclear family.

Ali Afandi (2000) explains that although *legitieme portie* provides protection to heirs, in practice there are often efforts to circumvent this provision through the mechanism of gifts or transfers of assets while the testator is still alive,



which can then be sued by the heirs if it is proven that the transfer was made with the intention of reducing their absolute share. Another problem that arises is related to the calculation of *legitime portie* when the testator leaves a large debt, where it must first be determined whether the debt reduces the inheritance as a whole or only reduces the free portion that can be bequeathed by the testator, as well as how to treat gifts that have been given before the testator dies in calculating the absolute share..

### 3. Inheritance Mechanisms Without a Will in Customary Law

The plurality of inheritance systems in Indonesian customary law, heavily influenced by the kinship systems adopted by each indigenous community, reflects local wisdom and cultural values that have developed over centuries to regulate social and economic relations within society. From the perspective of the theory of legal pluralism put forward by Sally Falk Moore (1973), the existence of these diverse customary inheritance legal systems demonstrates that law originates not only from the state but also from various other social structures that possess legitimacy and authority in regulating community life.

Bushar Muhammad (1985) explains that inheritance systems in customary law are inseparable from the social function of inherited property in indigenous communities, where land and other inherited property are viewed not only as economic assets but also as symbols of family identity and social ties that must be preserved for the benefit of future generations. In patrilineal societies, inheritance rights are restricted to sons due to the family name inheritance system and the responsibility to continue the lineage and perform traditional ceremonies, which are exclusively performed by men. In matrilineal societies, inheritance through the maternal line ensures that

inheritance remains under clan control and is not transferred to other clans through marriage.

The mechanism of family deliberation in resolving inheritance distribution according to customary law reflects the values of communalism and social harmony characteristic of Indonesian society, where shared interests and family harmony are placed above individual interests. According to the responsive legal theory proposed by Philippe Nonet and Philip Selznick (1978), a responsive legal system is one that accommodates the needs and aspirations of the community and is flexible in the face of social change.

Customary law, with its approach prioritizing deliberation and consensus, can be considered a responsive legal system that prioritizes solutions acceptable to all parties rather than the application of rigid rules. Hilman Hadikusuma (2003) emphasized that in customary law practice, inheritance distribution is often not carried out by mathematically calculating each heir's share, but rather by considering contextual factors such as each heir's economic needs, their contribution to caring for the testator during their lifetime, and their responsibilities to the extended family. However, this highly contextual approach, dependent on deliberation, also creates legal uncertainty and opens up opportunities for powerful parties within the family to influence the distribution of inheritance according to their own interests, particularly in cases where there are conflicts of interest among the heirs.

The issue of gender equality in customary inheritance is one of the most problematic areas in the contemporary Indonesian legal system, where there is tension between the recognition of customary law as part of the national legal system and the constitutional commitment to the principles of equality and non-discrimination. From the perspective of legal feminism theory put forward by Catharine



MacKinnon (1989), customary law practices that exclude or give women a smaller portion in inheritance are a form of structural discrimination that perpetuates the subordination of women in society and hinders the achievement of substantive equality between men and women.

Maria Farida Indrati (2007) explains that although Article 18B paragraph 2 of the 1945 Constitution provides recognition and respect for customary law community units and their traditional rights, this recognition is limited by the clause "as long as they are still alive and in accordance with the development of society and the principles of the Unitary State of the Republic of Indonesia" which opens up space for testing customary practices against the principles of human rights guaranteed in the constitution.

In its development, several court decisions have shown a tendency not to fully apply customary laws that are discriminatory against women, such as in cases in Bali where judges gave inheritance shares to daughters even though according to custom only sons have the right to inherit, with the consideration that the principles of justice and gender equality must be prioritized over discriminatory traditions, but this change has not been evenly distributed and still depends heavily on the legal awareness of judges and local communities.

## Conclusion

The study of inheritance law regarding inheritance without a will in Indonesia shows a very high complexity due to the simultaneous application of three legal systems, namely Islamic law, Western civil law, and customary law, each of which has a different philosophy, principles, and inheritance distribution mechanism. The Islamic legal system through the Compilation of Islamic Law applies an imperative faraid mechanism with a distribution

that has been determined precisely based on the position of the heirs, where there are differences in portions between men and women based on differences in economic responsibilities in the family and has accommodated the concept of substitute heirs to provide justice to grandchildren who are left by their parents.

The Western civil law system regulated in the Civil Code applies the *saisine* principle where the transfer of rights to inheritance occurs automatically since the testator's death, with a hierarchical system of heir classes and equal distribution to all children without distinction of gender, and provides protection through the *legitime portie* mechanism that guarantees the minimum rights of heirs in a straight line. Meanwhile, customary law systems vary widely depending on the kinship system adopted. In patrilineal societies, only men have the right to inherit, in matrilineal societies, inheritance follows the maternal line, and in parental societies, inheritance is relatively more balanced, although in practice, gender bias that disadvantages women persists.

The pluralism of inheritance law in Indonesia allows communities to choose which legal system to apply to settle inheritance distribution. However, it also creates legal uncertainty and potential conflict, particularly in families with different legal backgrounds or in cases of mixed marriages. The absence of a will in most inheritance cases in Indonesia results in the distribution of inheritance assets being entirely subject to applicable legal provisions without considering the wishes of the testator.

This, in some cases, can result in outcomes that do not align with the testator's expectations or do not reflect the actual contributions and needs of each heir. Therefore, efforts are needed to increase public legal awareness regarding the



importance of inheritance planning through making a will to ensure that the distribution of inheritance assets can be carried out in accordance with the will of the testator within the limits permitted by law, and legal reform is needed that can harmonize the various inheritance law systems in force in Indonesia while still respecting cultural diversity but also upholding the principles of justice, equality, and protection of human rights, especially in terms of gender equality in inheritance.

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