

## **Between Adat Law and National Law: The Resistance of Sasak Women to Their Inheritance Rights in Lombok Indonesia**

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**Abstract** This is a study of the conflict between customary law and national law in the Sasak community of Lombok, Indonesia, which focused on women's resistance to customary inheritance law which denies them inheritance rights. This research was conducted in several villages that are still strong in implementing customary inheritance law in the Sasak tribe; Sade hamlet, Teruwai village, Penujak village, and Bayan village. Data collection methods were conducted through documentation, observation, and interviews. In this study, it was discovered that the conflict originated from the patriarchal system of kinship and social relations in Sasak society. Sasak women, in a patriarchal system, did not receive fair rights in the distribution of inheritance. This is what triggers conflict between customary law and national law; inequality and injustice. For this reason, the resistance of Sasak women was carried out through the national legal process. This condition is a latent hazard that continues to threaten the stability of families and communities, and therefore requires a conceptual offer that can be accepted by all groups through a mediation process so that people continue to recognize their customary laws without having lost their national identity.

**Keywords:** • women • resistance • inheritance right • adat law • national law

## 1 Introduction

Through thousands of years, indigenous peoples in Indonesia have lived with their own social, kinship and legal systems. In the context of religion, indigenous peoples in Indonesia believe in local religious belief systems with various names of religion and God (Sabri et al., 2023). The arrival of Islam, Christianity, Hinduism and Buddhism in Indonesia did not shift the traditions of local communities, even though the community had embraced one of the above religions. The recognition of most indigenous peoples of Islamic law as a source of law also did not shift the existence of customary law. Customary law as the original law of Indonesian indigenous peoples interacts and dialogues with various legal systems and produces unique patterns in legal solutions (Sabri & Salahuddin, 2022). Similarly, in some Asian and African countries, the customary law is something that is recognized and exists in the society, and is equal to the national law (Benda-Beckmann, 2006; Roy, 2005; Tebbe, 2008). To this day, customary law is the choice of law for people who are seeking justice in the civil field (Bono, 2018).

In the field of inheritance, there are three models of legal settlement offered to the Indonesian people, namely; customary law, Islamic law, and national law (Bono, 2018; Kalyana & Israhadi, 2022; Rahmat & NU, 2021). All three laws are optional, and it is left to the community to decide which law is assumed to provide a sense of justice in accordance with the prevailing system in society. On the other hand, the demands of legal development in Indonesia are unification, uniformity, and comprehensive codification. Law is a social and political instrument that supports social stability, legal certainty, and development programs. Politically, the diversity of society in resolving cases and seeking justice is a potential source of conflict between members of society. In addition, to secure justice for the people, the government also pays attention to global developments that cover human rights, equality of rights and obligations before the law, gender equality, and other important issues (Salahuddin & Abdillah, 2022). Like the two sides of a coin, efforts to homogenize civil law in Indonesia met with resistance, and through several seminars it was finally agreed that customary law remains applicable as long as it does not conflict with national law (Salahuddin, 2005).

The problem is not over, customary law is dealing with gender issues, women's rights, and gender equality in all fields (Beauvoir, 1956; Fakhri, 1998; Smith, 1977). For feminists, men and women are equal, and therefore should be given the same rights and obligations in society. In the praxis of customary law in Indonesia, women are often neglected in inheritance, depends on the kinship system adopted by the community (Steinzor, 2003; Yeni Salma Barlinti, 2013). As a result, there are many cases of conflict in inheritance, especially from women who demand the acquisition of rights to inheritance property. What is fought for is justice, which refers to the purpose of the law (Kristiani, 2020; Saleh, 2013; Yuliyanto, 2017). In

Islamic studies, the study of the purpose of law is discussed in *maqāṣid al-syarī'ah*, which is the concept of law that leads humans to achieve happiness in this world and the hereafter (Rois & Salahuddin, 2021; Salahuddin, 2012; Salahuddin & Abdillah, 2022).

This study aims to describe the conflict map of inheritance distribution in the Sasak tribe of Indonesia and women's resistance to their inheritance rights; the roots of the problem, the causes of conflict, and its resolution in the community.

## 2 Literature overview

Each society has a unique system, and it is distinct from others. The fundamental uniqueness in society is related to the value system that is adopted, which then becomes tradition, culture, art, and others in society. The traditions then become laws, norms, ethics and science (Sabri & Salahuddin, 2022). The presence of the tradition is a long time before the revelation of religion, and the present of religion completes the tradition that already exists; or maybe on the contrary there is conflict between tradition and religion (Borg, 2011; Droogers, 2011; Friedman, 1992; Friedrich, 2020; Geertz & Clifford, 1993; Gutierrez, 1988a, 1988b; Kuntowijoyo, 1984; Mohta et al., 2021). There are open spaces in the societal system that provide a dialog between religion and tradition. In the Indonesian context, the existence of tradition and religion are complementary. In almost all parts of Indonesia, religion is present as a mitra in the development of local traditions.

In many part of the region in Indonesia, Islam is recognized as part of the customs and culture of the society (Salahuddin, 2005). Islam as a religion adhered to by the majority of Indonesian people does not eliminate the identity of tribal traditions that exist in society. Religion and tradition go hand in hand in the social system. Therefore, in the Indonesian civil law system; customary law, Islamic law, and national law are all recognized as legal systems in society to seek justice (Astutik & Trisiana, 2020). As Mohammed argues that government should to focus on a muddiest point of social and political problem of society to solve the problems faced (Mohammed, 2021). Through the time and space processes, Indonesian society shaped knowledge, created social systems, assigned certain roles, rights, obligations and responsibilities to each individual in the family and society.

The division of roles as described above is laid out in patrilineal, matrilineal, and bilateral kinship systems (Dyatmikawati, 2016; Hawari & Tanawijaya, 2022). In the Indonesian context, the majority of indigenous tribal communities adhere to the patrilineal system. This kinship system has a strong influence on the inheritance distribution system in indigenous peoples in Indonesia (Judiasih & Fakhriah, 2018; Suwarti et al., 2022). For Muslims in Indonesia, the Islamic inheritance system is an option not an obligation; the customary law is favored. If there is a dispute, then

Islamic law is referred to. But if there is still a dispute, it is returned to the national law. The existence of the three laws above in the Indonesian legal system is an instrument to seek justice. Local knowledge, tradition, and community experiences are prioritized on the basis of humanitarian values and love, religion offers peace, and the state provides legal certainty. In the Islamic scientific tradition, the concepts of *al-'urf*, *maṣlahah*, and *maqāṣid al-syarī'ah* are methodologies used for the integration of traditions in the religious and state systems (Rois & Salahuddin, 2021; Salahuddin & Abdillah, 2022; Sumartiningrum & Muh. Salahuddin, 2022).

### 3 Methode of Research

This research is a sociological research in the field of inheritance law in the Sasak tribe community on Lombok Island, Indonesia. The focus of this research is the conflict between customary law and national law in the distribution of inheritance, which specifically describes women's resistance to the provisions of customary inheritance law. The approaches in this research are sociological, historical, and legal approaches. This research was conducted in several villages in Lombok that are still strong in practicing customary law; Sade, Teruwai, Penujak, and Bayan. Data collection in this study using documentation, library research, observation, and interview methods. Interviews were conducted with key figures in indigenous communities, family members in the community, and several judges in religious courts. The research analysis uses qualitative analysis, namely by framing and arranging facts and data to be made into new facts.

### 4 Discussion

#### 4.1 Sasak Inheritance Customary Law

Conflict in the practice of customary inheritance is motivated by the patrilineal patronage system of the Sasak community, in which Sasak women do not have the right to inherit their parents' property (Makhrup et al., 2001). In the patriarchal system of Sasak society, the pattern of inheritance distribution is carried out as follows: 1) If someone dies, the one entitled to the entire inheritance is the oldest male in the family. The eldest man gets an abundance of wealth from his parents that is responsible for all the needs of his younger siblings and relatives. In many cases, when the eldest brother is not responsible, it often leaves wounds for other family members. The eldest brother's monopoly over the estate without responsibility is a source of misery; 2) if someone dies, the son has the right to control the land and house. Meanwhile, women are given the right to own furniture in the house in the form of crockery and kitchen utensils. This inheritance system is still practiced in the northern and southern parts of Lombok; 3) if the deceased person has no sons, then his property is inherited by his brothers. Daughters, in such cases, have the same rights as in points 1 and 2 above. (Haji munir, 2022; Makhrup

et al., 2001; Munir, 2023; Sari, 2016; Sarmini et al., 2018). However, in its practice, the division of inheritance in the Sasak tribal community technically has a various perspective.

The Sasak community of Sade village, for example, positions sons as the successors of parents (*anaq perangga*) who are responsible for the continuity of the family. Therefore, he is given inheritance rights in the form of houses, gardens, rice fields, livestock, vehicles, and other assets that are considered as instruments to maintain the continuity of the family (Makhrup et al., 2001; Sari, 2016; Sarmini et al., 2018). Property stored in the house in the form of kitchen utensils, clothes, mattresses, jewelry, and others become the right of inheritance for women (Makhrup et al., 2001; Munir, 2023). If there are no sons in the family, daughters take the place of sons and are entitled to inherit property from their parents. If the couple has no offspring (*putung*), then the right of inheritance will be handed over to other family members whose line of kinship is closest to the deceased (Sari, 2016).

In the village of Truwai, women also do not receive proper inheritance rights, which is similar to Sade village. Married women are considered to have left the family, and become the responsibility of the husband and his family. For this reason, women are only given inheritance rights in the form of household goods and jewelry. In cases where the testator only has daughters, the inheritance rights in the form of productive assets are given to the testator's father (if still alive) and the testator's brother.

Penujak villagers explicitly recognize that sons are key figures in the family. Men for the Penujak community are the relay of the continuity of a family, and at the same time a symbol of power over societal discourse. Therefore, men in Penujak are given great responsibility to protect their families. For the responsibility given, sons are given inheritance rights in the form of houses, rice fields, gardens, vehicles, and other productive and valuable assets. Similar to the Truwai community, the Penujak village community considers that women, especially those who are married, will follow their husband's family, and their descendants will also follow their husband's clan. Therefore, the inheritance rights of women in Penujak village are in the form of jewelry and some money given by their mothers and grandmothers from generation to generation. (Syafuruddin et al., 2023).

The inheritance model in the Sasak Bayan community (the northern part of Sasak society) also prioritizes men in the distribution of inheritance. Men are given more social responsibility in the community social system, and therefore are considered eligible for more inheritance rights than others. Meanwhile, women are given behind-the-scenes duties, and are limited to service and devotion to their husbands. For the wife's service and devotion, the husband must be responsible for his wife and children. Because the husband is responsible for his wife, women's inheritance

rights in society are only extra assets for the welfare of the family, the amount of which is in accordance with the kindness of the giver.

The patriarchal kinship model and social system in Sasak tribal society form patterns, models, and inheritance systems that also prioritize men. The meeting of Islamic values, science, and Sasak community traditions produces new ideas (emergence properties) which lead to resistance to the Sasak customary inheritance distribution pattern. There is some jurisprudence that affirms that Sasak women have the same legal rights and inheritance rights as men. Therefore, the Supreme Court established equal rights to inheritance for men and women (Supreme Court Decision No. 179K/Sip/1961). The above verdict was further corroborated by a 1978 Supreme Court ruling that ruled that Inaq Rasini (a Sasak woman) had the same inheritance rights as her other brothers. The decision of the Selong District Court No. 164/P.N.Sel/1982/Pdt dated December 27, 1982, corroborates the two legal decisions above that men and women in Sasak society have the same inheritance rights over the property of their deceased parents (Munir, 2023). Despite the jurisprudence and legal provisions on women's inheritance rights established, the Sasak community still prioritizes the customary inheritance system in the distribution of inheritance to this day.

#### **4.2 Inheritance Conflict in Sasak**

The principle of Sasak customary inheritance law that places sons as heirs to the throne and parental property (anaq prangge) is a norm that block women's civil rights to become heirs. (Munir, 2023). With the existing developments in the community, the inheritance distribution model as described in the previous point has caused the community to always be trapped in latent conflicts. First, women's resistance to the provisions of customary inheritance law that are considered unfair and not in the favor of women's interests. Second, people who still adhere to customary law consider court decisions (jurisprudence) as a form of government intervention to undermine the customary order system (a living tradition) that has been recognized by the community for thousands of years. This kind of conflict can develop into escalation, becoming a manifestation of conflict because of the availability of the court as an effort to resolve conflicts over customary inheritance practices in Sasak society.

Based on data from the religious courts, 736 inheritance cases were recorded in 2019-2022 on Lombok Island. Details of the number of inheritance cases above can be viewed in the following table:

**Table 1: Number of Inheritance Cases at Lombok Religious Court**

NO	COURT DISTRICT	NUMBER OF INHERITANCE CASES				TOTAL
		2019	2020	2021	2022	
1	Mataram Religious Court	14	17	52	18	101
2	Giri Menang Religious Court	47	52	22	18	139
3	Selong Religious Court	61	61	67	64	253
4	Praya Religious Court	53	71	52	67	243
TOTAL		175	201	193	167	736

Most of the inheritance cases filed were women's lawsuits against decisions in customary law institutions that did not give them the right to inherit property from their parents. What is being fought for is equal rights and justice over the inheritance of parents with the following reasons; 1) children in the family (female or male) have the same status, rights and obligations; 2) children in the family (female or male) provide the same roles and responsibilities when living in the nuclear family; 3) religious law and national law provide inheritance rights for women, the same as men, although the amount received is slightly different.

A small number of cases were resolved through mediation and arbitration by way of deliberation (soloh), others proceeded to a higher court level, and the majority of inheritance cases could be resolved at the first court level.

### 4.3 The Future of Customary Inheritance Law

All communities in Indonesia have a customary law, and each member of the community is socially and emotionally bound to their own customary law. Customary law in Indonesia is unwritten law, but is strongly recognized by members of the community (Alfiander et al., 2022; Firdaus, 2011; Prasetya, 2016; Roy, 2005). Although community members have left their customary territories, in some cases they often return to customary law to resolve the legal problems they face, including in the field of inheritance (Alfiander et al., 2022).

In the field of inheritance, customary law in Indonesia follows the kinship system and social relations prevailing in society. In general, the patterns of kinship and social relations in Indonesian customary societies are divided into three patterns, namely; patriarchy, matriarchy, and bilateral. In indigenous communities that adhere to a patriarchal kinship system, women do not receive proper inheritance rights, they are marginalized and often ignored. This can be found in the customary



inheritance practices of the Tapanuli, Bali and Lombok tribes (Rahmadanil & Zuwanda, 2021). This model of customary inheritance law is often confronted with modernity, social change and the development of science. The main source of conflict is the inequality and injustice perceived by family members in the practice of customary inheritance law in a patriarchal society.

Indigenous communities with matriarchal kinship systems such as in Minangkabau and Lamongan prioritize women in the distribution of inheritance, without neglecting the rights of men. In Minangkabau, for example, high heirlooms (*pusako tinggi*), which include houses, land, heirlooms, and other valuable family property, can only be passed on to women (Alfiander et al., 2022). Men are only given *pusako randah* property (low heirlooms) as provisions for continuing life. *Pusako randah* is distributed by following the distribution model in Islamic law (Alfiander et al., 2022).

The Bugis, Makassar, Tallo, Goa, Bima and several other indigenous communities that adhere to the bilateral kinship system position sons and daughters equally in the distribution of inheritance. All inheritance is distributed equally, and if there is a dispute over the distribution, the inheritance is sold (if agreed by the family) and the proceeds are divided equally (Khadijah & Aswari, 2019; Tarmizi, 2020). And usually, buyers of the inheritance are prioritized from family members. In this bilateral kinship system, the distribution of inheritance is in line with national law, and there is no conflict between customary inheritance law and national law.

What is unique is the customary law of inheritance in the Sabu community, where daughters can only inherit from the property owned by their mother. Similarly, sons can only inherit from their father's estate. This model of inheritance practice does not follow the kinship system as above, but rather tends to follow a biological-based inheritance distribution pattern. The diversity of inheritance law above, coupled with the Chinese, European, Middle Eastern, and other ethnic groups, adds to the diversity of inheritance law practices in Indonesia. All of the ethnicities mentioned above exist and develop in Indonesia into a new community, with new traditions, and new laws in accordance with each tradition.

Considering the above diversity, the Supreme Court of the Republic of Indonesia issued a letter dated 18 May 1991 No. MA/kumdil/171/V/K/1991 which stated that in the division of inheritance for 1) Indigenous Indonesians, customary law applies; 2) Dutch, Europeans and their equivalents apply the National Civil Law; 3) Chinese descendants apply the National Civil Law; 4) Other Foreign Eastern Descendants (Arabs, Hindus, Pakistanis and Others) in Inheritance apply the Law of their Ancestral Country. With the enactment of Presidential Instruction of the Republic of Indonesia No. 1 of 1991 concerning the Compilation of Islamic Law, Indonesian

citizens who are Muslims can apply for inheritance based on the Islamic religion through religious courts (P. & Suleman, 2016).

The presence of the above law is an academic mandate from various legal seminars in Indonesia that demanded changes in the customary inheritance system that does not empower women with inheritance rights. This means that Indonesians who do not receive justice in the distribution of inheritance under customary law can seek justice through the judicial institutions provided by the government; district courts and religious courts. It also means that adat law is contradicted by national law.

It must be understood that customary law is legal norms that are completely different from Western law (Firdaus, 2011). Customary law is an original Indonesian law which has been formulated based on the values, philosophy, and social practices of Indonesian society since a long time ago, and still continues to dialogue with the changes that exist in society (Rahmat & NU, 2021). Therefore, some academics defend the customary law and make it a fundamental basis in the development of national law. Customary law reflects the identity and character of Indonesian society (Firdaus, 2011; Munir, 2023; P. & Suleman, 2016).

One form of adaptability of customary inheritance law is its meeting with an Islamic law which in the oral tradition of the Sasak people is known as *sepelembah sepersonan* (men get 2 parts, women get 1 part) in the distribution of inheritance is the submission of the Sasak people to an Islamic teaching (Alfiander et al., 2022; Haji munir, 2022; Munir, 2023). In some Sasak communities, using Islamic inheritance law in the distribution of inheritance which has been confirmed in the customary institutional system. Islam is the lifeblood of Indonesian society, including in the Sasak tribe of Lombok. The Sasak customary inheritance distribution model as described earlier is part of the implementation of the Islamic value that states that 'men are protectors of women' which is translated into *anaq perangga* in the Sasak inheritance tradition, where sons are obliged to protect their sisters in the family. In the unlikely case of a divorce of a married sister, the sister is back in the family and under the responsibility of the *anaq perangga*. This customary law must be understood within the macro system of Indonesian custom. Herein lies the paradigmatic difference between Western law and customary law; inheritance in Western law is personal, while inheritance in Indonesian customary law is communal (Irianto, 2004; Jayus, 2020; Kalyana & Israhadi, 2022; Prasetya, 2016). Inheritance in the western legal system is perceived as individual ownership, while inheritance in the customary law system in Indonesia is closer to the social responsibility that associated with a certain person (Prasetya, 2016). This is in line with God's command in the Qur'an which states that 'the men are the leaders of the women, that is because God has preferred some of them (men) over others (women) and because they (men) have spent some of their wealth'.

The discourse on human rights and gender justice was an emerging issue in the early 1990s in Indonesia. For the Sasak community with a low level of education, it takes time to understand these issues and integrate it into their customary law. To maintain stability and harmony in social relations, Sasak people recognize the term *aiq meneng tunjung tilah empaq bau*; a wise means of the Sasak tribe to solve problems without problems (Asmara, 2018). In Islam, as a reference for Sasak society, the methodological tools *al-'urf* and *al-maslahah* are also known. *Al-'urf* is the integration of tradition/custom with Islamic values, while *al-maslahah* is an effort to construct laws that provide benefits and utility for the survival of society that refers to the objectives of the law (*maqashid al-syariah*), namely the protection of religion, protection of the soul, protection of the mind, protection of property, and protection of offspring (Salahuddin, 2017).

Customary inheritance law in Indonesia is not anti-change, and each customary law system has a set of values that are wise in responding to social developments (Nurhilaliati, 2005). Islam as a methodological basis in the development of customary law in most Indonesian indigenous communities also has theoretical-practical tools in responding to changes in society. There is a dialogical meeting point between Islamic law, customary law and national law, and it does not need to be clashed. This is in line with Benda's opinion that 'changing one changing all' ensures that there is always a dynamic that allows the meeting of ideas of Islamic law, customary law, and national law in Indonesia (Benda-Beckmann, 2006).

## 5 Conclusions

The beginning of the conflict between customary law and national law in the field of inheritance is the existence of legal decisions that deny customary law. The different perspectives of positive law and customary law in analyzing inheritance property is a battle of ideas that continues to this day. Methodologically, customary law has tools that allow for dialog and change, and it takes a long time. The recognition of customary law over Islamic law in Sumatra, Sulawesi, Banjar, Bima, parts of Java, and other regions is a process of intense dialog between the two. The development of law in Indonesia should be taken from the local spirit of Indonesian indigenous peoples and dialogued with existing social changes, not just imposing something that is foreign to Indonesian society; that is the real source of conflict.

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