



**PLURALITY OF INHERITANCE LEGAL SYSTEM  
FOR INDONESIAN MUSLIMS: A SOCIOLOGICAL REVIEW**

**Muhammad Tsaqib Idary**

Universitas Islam Negeri Sunan Gunung Djati Bandung, Indonesia  
*m.tsaqib.idary@gmail.com*

**Oyo Sunaryo Mukhlas**

Universitas Islam Negeri Sunan Gunung Djati Bandung, Indonesia  
*oyosunaryomukhlas@uinsdg.ac.id*

**Beni Ahmad Saebani**

Universitas Islam Negeri Sunan Gunung Djati Bandung, Indonesia  
*beniahmadsaebani210468@gmail.com*

**Restu Khaliq**

University of Western Australia, Australia  
*restu.khaliq@research.uwa.edu.au*

**ABSTRACT**

This qualitative study aims to identify the sociological construction of the implementation of legal principles in the inheritance system in Indonesia and its relevance to the Islamic inheritance system. The theory of *receptio a contrario* and the theory of structural functionalism as a legal sociology perspective are used to see how social construction is related to the implementation of the principle of justice, the principle of freedom of will, and the individual principle in the implementation of the inheritance system in a plural Indonesian society. This study finds the construction of social relations related to legal principles in the implementation of the national inheritance system with Islamic inheritance in Indonesia. The relational construction of these principles leads to the implementation of harmony between the implementation of the national inheritance legal system and the Islamic inheritance system so that both can run in an orderly and well-integrated manner. This study confirms that in sociological construction, the relationship between the principle of law enforcement and the social and cultural values of society cannot be dichotomized.

**Keyword:** Social Construction, Inheritance Law Plurality, Muslims, Indonesia



## A. Introduction

Indonesia's inheritance law system is experiencing a severe implementation difficulty. Uncertainty about which law to apply--customary law, national law, or Islamic law--often results in succession disputes. This dilemma is aggravated by disagreements over who is entitled to the inheritance, how it is distributed properly, and who has the right to issue inheritance certificates. As a result, people are frequently imprisoned in legal uncertainty, which is harmful to all parties.

Inheritance law, which governs the transfer of ownership rights from the testator's estate to the heirs, is a complex process. Starting with deciding who is entitled to become heirs, dividing the portion of rights equally, and determining how to implement the distribution of inheritance, this procedure frequently confronts practical hurdles. Furthermore, courts, which are supposed to be the center of resolution, frequently face a quandary while evaluating inheritance cases, especially in plural societies.

According to Lawrence Friedman's Legal System Theory, legal efficacy is only possible when the legal structure, legal substance, and legal culture all work together. To ensure the legal system's success, all three must perform their roles to the best of their abilities. When one of the aspects fails to work correctly, the law loses effectiveness and fails to achieve its objectives (Simatupang, 2020).

In Indonesia's pluralistic reality, the sociology of law approach is critical for understanding how legal principles such as justice, testamentary freedom, and the individual principle are implemented in a diverse community. This approach allows for in-depth assessments of the intersection of customary law, national law, and Islamic law, as well as new insights into the social constructs that influence the inheritance system's implementation (Henslin, 2007).

The purpose of this research is to determine the sociological construction of the execution of legal principles in Indonesia's inheritance system, as well as its relevance to the Islamic inheritance system. The idea of *receptio a contrario* and the theory of structural functionalism provide a framework for investigating the impact of social construction on the implementation of the inheritance system in a heterogeneous Indonesian community. The documentation technique involves gathering primary and secondary legal information from relevant literature, periodicals, and internet media.

Several earlier studies offer a solid foundation. According to Beni Ahmad Saebani, the sociology of Islamic law focuses on the actuality of legal implementation in society (Saebani, 2024). Astuti's research demonstrates that customary law, as a component of social reality, survives and is incorporated into formal law as long as it does not contradict Islamic law (Samad, 2021). Meanwhile, Abdurrahman adds that the Compilation of Islamic Law provides legal certainty by codifying Islamic inheritance law (Abdurrahman, 1992).

Unlike earlier research, this study focuses on how social construction effects the execution of legal concepts in Indonesia's inheritance system. This study, conducted from a sociology of law perspective, provides a new understanding of the obstacles and solutions in implementing the inheritance system in Indonesia's pluralistic society.

## **B. Principles in the Legal System**

The term principle is derived etymologically from the Arabic *asasun*, signifying base, basis, or foundation. In linguistics, a principle denotes the foundation or ground of thought or opinion. In various languages, the term principle is frequently synonymous with *principle*, denoting the foundational truth that underpins thought, action, and decision-making (Yulianti, 2008).

Legal pluralism is not a theory, but a research perspective that highlights the diversity and interactions between different socio-legal spheres (Shahar & Yefet, 2024). It encompasses principles such as plurality, relationality, power, and agency (Shahar & Yefet, 2024).

The concept of legal principles is varied and contingent upon the perspectives of individual authors. Paul Scholten characterizes legal principles as 'the inclinations mandated by our comprehension of morality inside the law.' These legal principles are recognized as the fundamental concepts behind the legal system, encompassing both law and court rulings. Legal provisions are regarded as an explication of the principle (Atmadja, 2018; Notohamidjoyo, 1975).

Karl Larenz, in his work *Methodenlehre der Rechtswissenschaft*, asserts that legal principles are ethical legal standards that guide legal development. He underscores that legal principles encompass moral ideals that underpin the establishment of legal regulations by both the legislative and the judiciary (Bruggink, 1996).

P. Belefroid characterizes broad legal principles as fundamental norms derived from positive law (Bruggink, 1996). He asserts that legal principles are intrinsic values inside positive law and constitute a component of the legal system. The legal system comprises a cohesive set of rules, necessitating an understanding of the law beyond the examination of a singular rule. Legal principles facilitate the evolution and advancement of the law, while embodying the foundational ethical values (Kelsen, 2017). The common law system is a prime example of the evolution of legal principles over time. It undergoes growth and maturation in response to social transformations, as it modifies or replaces outdated principles (Epstein, 1980).

In societal contexts, norms that signify principles, bases, or foundations are frequently changing. In Indonesian, the term denotes rule or benchmark, whereas in Arabic, it is translated as *al-asas* (base or foundation), *al-qanun* (fundamental norms), *al-mabda* (principle), and *an-nasaq* (method or approach). As societal

growth becomes increasingly intricate, these dynamics interact with the law. The establishment of a harmonious communal existence necessitates legal concepts that align with societal values and requirements (Kelsen, 2017).

The principle in the system of thought serves as the fundamental basis derived from legal construction, specifically the study of empirical facts that is subsequently articulated into general or abstract attributes (Hamzani, 2019). In the context of law, principles are fundamental truths that serve as a basis for thought and reasoning in law enforcement. Its purpose serves as a reference for addressing diverse legal issues (L. Ali, 2015).

Legal principles retain their significance notwithstanding the emergence of legislation. Conversely, principles remain the cornerstone in the development of later regulations. Principles embody ideals and ethical directives that sustain the law's vitality, evolution, and relevance to societal dynamics. Consequently, principles serve as the fundamental foundation for the development of regulations, policies, and decisions that influence human activities (Luthan, 2009; Shomad, 2017).

### **C. The Diversity of Inheritance Law Systems in Indonesia**

In Indonesia, the law of inheritance distribution is regulated under three legal systems, namely Western inheritance law (KUHPERDATA), Islamic inheritance law, and customary inheritance law. The following is a further explanation of each of these legal systems.

#### **1. Western Inheritance Law**

The Civil Code (KUHPERDATA) applicable in Indonesia is derived from the *Burgerlijk Wetboek (BW)*, which consists of four books: 1) Book One on Persons, 2) Second Book on Property, 3) Book Three on Obligations, and 4) Book Four on Evidence and Expiration. The law of inheritance is regulated in Book Two, which is first mentioned in Article 830 of the Civil Code. This article states that inheritance law regulates the legal position of a person's property after he dies, especially in relation to the transfer of such property to other people (Tutik, 2015). In inheritance law according to BW, there is a principle which states that 'if a person dies, then immediately all his rights and obligations pass to his heirs'. Article 833 of the Civil Code further explains that the heirs automatically obtain ownership of all goods, rights, and receivables of the testator. This concept is known as *saisine*, which is expressed in the French proverb 'le mort saisit le vif' (Tutik, 2015).

#### **2. Islamic Inheritance Law**

Islamic inheritance law, which has been in effect since the 7th century AD, has not undergone significant changes and is still maintained today. This law is considered as God's law that applies for all time and must be implemented without

change. The Islamic law of inheritance was derived from Qur'anic legislation, which represented a transition from pre-Islamic tribal inheritance practices to a more individualistic approach (Hennigan, 2001). This system is highly regarded for its comprehensive nature and is implemented in a variety of Muslim-majority countries, occasionally even extending to non-Muslims (Anderson, 1965).

In the Compilation of Islamic Law (KHI), inheritance law adheres to the bilateral principle, which means that an heir can receive inheritance rights from both sides of the family, both from the male and female line. Islamic inheritance law only applies if it fulfils several conditions: first, the heir, which is a person who dies and leaves heirs and property; second, the heir, who has a blood or marriage relationship with the heir, is Muslim, and is not prevented by law from becoming an heir; and third, the inheritance, which is the property left by the heir, both objects and rights. The legal basis of Islamic inheritance can be found in several verses of the Qur'an, such as Surah an-Nisa verses 11-14, 33, 34, Surah al-Baqarah verse 233, and Surah al-Ahzab verse 6. Heirs who are Muslims can be known through identity cards, confessions, practices, or testimonies, while newborns follow the religion of their father or environment (Hadikusuma, 2015).

The duties of the heirs after the testator dies include: taking care of the funeral, settling the debts of the testator, carrying out the testator's will, and dividing the inheritance among the entitled heirs. The division of inheritance is regulated in Articles 176-182 KHI, which classifies heirs based on blood and marriage relations. For example, children born out of wedlock can only inherit from the mother and the mother's family (Article 186 KHI). In addition, wills in KHI can be given to other than heirs, with the consent of all heirs (Article 195 paragraph 3 KHI).

### 3. Customary Inheritance Law

Customary inheritance law regulates the passing of wealth from one generation to the next. This law does not recognise numerical division, but is based on consideration of the needs and conditions of each heir (Suparman, 2007). Customary inheritance law regulates the method of inheritance of goods, both tangible and intangible, from the testator to the heirs. Soerojo Wignjodipoero explains that customary inheritance law includes norms that determine material and immaterial assets that can be handed over to descendants (Wignjodipoero, 1995).

There are three systems of descent in customary inheritance law. Patrilineal, where the lineage follows the male side, and inheritance only applies in the male family. Matrilineal, where the lineage follows the female side, and inheritance only applies in the mother's family. An example is Minangkabau society, where daughters have a more dominant position in inheritance. Parental, where the lineage connects both the father and the mother. In this system, there is

no distinction between the father and mother in inheritance, as found in Javanese society (Hadikusuma, 2015).

In the Mandar community of Indonesia, inheritance is divided equally between sons and daughters, reflecting a combination of Islamic and customary laws (Rahman et al., 2022). In South Aceh, Indonesia, customary law is preferred because it is flexible and aligned with community ideals, allowing for gender-equitable inheritance (Harnides et al., 2023). In contrast, the Khasi community of India follows a matrilineal system, yet misconceptions about women's inheritance rights persist, highlighting the need for stronger definition and understanding of these rights (Singh & Bhatnagar, 2024).

#### **D. Sociological Construction of the Relationship between the Principles of Application of National Inheritance Law and Islamic Inheritance**

The implementation of Islamic inheritance law in Indonesia is closely linked to the discussion regarding the interplay between Islamic law and customary law. Roscoe Pound, through his concept of law as a tool for societal regulation and renewal, emphasized that legislation must address three core interests: those of the state, society, and individuals (Darmodiharjo, 1995). In a similar vein, Satjipto Rahardjo conceptualized law as a mechanism for social control and regulation, designed to promote order and stability (Rahardjo, 1980).

Understanding law necessitates an examination of the social structure and systems in which it functions, viewed through a sociological lens. This viewpoint is based on the concept that society operates as a cohesive organism, held together by consensus, which promotes harmonious interactions (Martono, 2016). Parsons' structural functionalism asserts that societal order is maintained through mechanisms including interdependence among system components, the preservation of equilibrium, systematic transformation, and the integration of individual components into a cohesive whole. The mechanisms in question maintain societal balance and stability, facilitating effective interaction among components (Ritzer & Goodman, 2004).

The application of these concepts to Indonesia's inheritance law, viewed through the perspective of legal sociology, indicates that societal order is upheld when essential components—religious leaders, community norms, values, and legal frameworks—function in a cohesive manner. This integration promotes a society that is driven by consensus, effectively addressing issues related to inheritance and facilitating positive social change.

Soerjono Soekanto identified three primary advantages of the sociology of law. Initially, it offers an understanding of the functioning of law within the framework of society (Soekanto, 2007). The second aspect evaluates the effectiveness of law as an instrument for social control, transformation, and management of interactions. Third, it assesses the practical effectiveness of legal

provisions within society (Soekanto, 2007). The insights illustrate the interaction between sociology and law, supporting initiatives to create laws that accurately represent societal phenomena. An illustration of this dynamic is evident in land law, particularly in relation to property acquisition for public benefit. This section highlights the differences between legislative frameworks and community conditions, which frequently result in conflicts (Winario, 2017).

Legal sociology employs a social perspective to analyze these frameworks, distinguishing itself from normative approaches commonly found in areas such as criminal, civil, or procedural law. Achmad Ali and Wiwie Heryani emphasize the relationship between sociology and law by introducing the concept of the law of order, which combines legal principles with social systems within society (A. Ali & Heryani, 2012). According to Parsons, social stability is derived from the presence of shared values and consensus, despite the existence of human selfishness and irrational behavior. Social institutions are essential for maintaining a harmonious and stable order within society.

The relationship between national inheritance law and Islamic inheritance law in Indonesia is a reflection of the complex interaction between religious, cultural, and legal elements. This intricate interplay can be observed in various aspects of Indonesian society, where Islamic and customary laws coexist and evolve to meet the needs of diverse communities. One prominent aspect of this relationship is the concept of the bilateral inheritance system. Hazairin's theory, which posits that the Qur'an supports such a system, suggests that both sons and daughters should have equal inheritance rights (Cammack, 2002). This theory is gradually being integrated into the framework of Indonesian Islamic inheritance law, though it remains a subject of ongoing legal adaptation (Cammack, 2002). This evolving legal perspective highlights the dynamic nature of Islamic inheritance law in Indonesia, where traditional interpretations are increasingly being reconsidered in light of contemporary needs and gender equality.

In certain regions, judicial *ijtihad* (independent reasoning) plays a crucial role in adapting Islamic inheritance law to local customs and social contexts. In Pontianak, for example, judges apply *ijtihad* to recognize socio-cultural nuances, such as allowing daughters to inherit as *asabah* (residual heirs) and acknowledging the rights of children from unregistered marriages (Hasan, 2023). This flexible approach illustrates how Islamic law, when interpreted through *ijtihad*, can adapt to local realities while maintaining its core principles, thus fostering a more inclusive and context-sensitive legal system.

Moreover, local wisdom and customs play an important role in shaping inheritance practices across Indonesia. In Lombok, for instance, the integration of local wisdom (*al-'urf*) and the concept of public good (*maslahah*) helps prevent inheritance disputes and promotes peaceful family dynamics (Munir, 2023). Similarly, in West Java, customary practices such as *kanyaah* (affection) are

employed to resolve conflicts amicably, further reflecting the harmonious relationship between Islamic law and local customs in managing inheritance matters (Khosyi'ah & Rusyana, 2022). These practices demonstrate how traditional values can complement legal systems, fostering conflict resolution that aligns with both community needs and legal frameworks.

The broader Indonesian legal system also reflects a commitment to legal pluralism, accommodating non-Muslim heirs through mechanisms such as the *wasiat wajibah* (mandatory will) (Munir, 2023; Zubair & Latif, 2022). This provision allows non-Muslim heirs to inherit property, bridging religious divides and ensuring that inheritance rights are respected across different faith communities (Munir, 2023; Zubair & Latif, 2022). This approach mirrors broader legal reforms aimed at addressing social changes, where inclusivity and equity are prioritized (Khosyi'ah & Rusyana, 2022; Munir, 2023; Zubair & Latif, 2022). By integrating these provisions, the Indonesian legal system demonstrates its flexibility and responsiveness to the diverse needs of its population.

Lastly, the historical and cultural context plays a significant role in shaping the relationship between *adat* (customary law) and Islamic law, particularly in regions such as West Sumatra (Von Benda-Beckmann & Von Benda-Beckmann, 2012). The influence of colonial rule has led to a complex legal landscape in which both customary and Islamic laws coexist, sometimes in tension but also in cooperation. This historical dynamic underscores the pluralistic nature of Indonesia's legal system, where multiple legal traditions are interwoven to address the diverse needs of its people (Von Benda-Beckmann & Von Benda-Beckmann, 2012).

## **E. Conclusion**

The inheritance law system in Indonesia is marked by a complicated interaction of national, Islamic, and customary laws, illustrating the country's heterogeneous legal framework. This variability, although providing freedom, also poses considerable issues regarding consistency and clarity in the implementation of inheritance rules. The legal ambiguity stemming from conflicting legal systems namely customary law, national law, and Islamic law results in issues about inheritance rights, distribution, and legitimate heirs. This complexity is especially apparent in Indonesia's diverse society, where legal, cultural, and religious values converge and occasionally clash. Legal pluralism is fundamental to comprehending the interactions among these diverse systems. Although Islamic inheritance law has profound historical origins in Indonesia, it necessitates adaptation to local practices and the changing demands of society. This adaptability is enabled by judicial *ijtihad* and the acknowledgment of local wisdom, permitting Islamic inheritance law to live with and integrate customary traditions. Through the application of *ijtihad*, judges have integrated socio-cultural backgrounds, rendering

the law more inclusive and adaptable, thereby settling inheritance disputes in accordance with both legal principles and local traditions.

Furthermore, the Indonesian legal system exemplifies its pluralistic character through systems that reconcile religious differences, such as the wasiat wajibah, which guarantees inheritance rights for non-Muslim heirs. This clause highlights Indonesia's dedication to inclusivity and equity, promoting legal reforms that cater to the varied requirements of the populace. The incorporation of local customs, such as Lombok's al-'urf and West Java's kanyaah, illustrates how traditional practices enhance legal frameworks, fostering peaceful settlement and strengthening communal values. Indonesia's inheritance law system ultimately embodies a dynamic and changing framework that aims to reconcile legal certainty with the acknowledgment of cultural and religious diversity. This research emphasizes the significance of comprehending the sociological foundations of law, offering critical insights into the practical implementation of inheritance laws within Indonesia's heterogeneous population. By implementing ongoing legal changes and fostering inclusivity, Indonesia can develop a legal system that adequately meets the demands of its diverse people while advancing equity and justice in inheritance issues.

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