



## **The Injustice of the Mayorat Inheritance System in the Lampung Saibatin Indigenous Community towards Women**

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**Abstrak:** Hukum waris yang berlaku di Indonesia sampai saat ini masih pluralistik, ada hukum waris Islam, hukum waris Barat dan hukum waris adat. Di Indonesia, ketiga sistem hukum waris itu, masih berlaku sampai sekarang. Salah satunya pembagian harta waris masyarakat adat lampung Saibatin menggunakan sistem kekerabatan patrilineal. Sistem Kekeluargaan patrilineal menarik keturunan menurut garis bapak, dimana kedudukan anak laki-laki lebih tinggi dibandingkan kedudukan anak perempuan, termasuk dalam kewarisan perempuan tidak dihitung sebagai ahli waris. Dalam kekeluargaan patrilineal, harta pusaka dari orangtuanya tidak dibagi dan dikuasai anak tertua. Sistem pewarisan semacam ini dalam hukum adat disebut sistem mayorat. Artinya hak pakai, hak mengolah dan memungut hasilnya dikuasai sepenuhnya oleh anak laki laki tertua, dilihat dari teori keadilan ini menunjukkan bahwa anak perempuan bagi masyarakat adat Saibatin diperlakukan tidak adil sebagai ahli waris. Penelitian ini bertujuan untuk menganalisis kedudukan anak perempuan dalam sistem kewarisan mayorat. Penelitian ini berbasis lapangan dengan teknik pengumpulan data melalui wawancara, observasi, dan dokumentasi. Hasil dari analisis permasalahan menyatakan bahwa dalam sistem kekerabatan patrilineal, anak perempuan apabila sudah menikah akan menjadi keluarga dari suaminya dan keluar dari kerbat orangtuanya. Sedangkan, ketidakadilan yang dikonstruksi dan dilanggengkan oleh tradisi tersebut menjadi hukum bagi masyarakat adat Lampung Saibatin.

**Kata Kunci:** Ketidakadilan, Sistem Mayorat, Masyarakat Adat Lampung.

**Abstract:** The inheritance law currently in force in Indonesia is still pluralistic, there are Islamic inheritance law, Western inheritance law and customary inheritance law. In Indonesia, the three inheritance law systems are still valid today. For traditional law communities such as the Lampung Saibatin indigenous community, the distribution of inheritance is related to the hereditary system that applies to the community. The Lampung Saibatin indigenous community uses a patrilineal family or kinship sistem. Patrilineal family is a hereditary sistem drawn according to the father's line, that is, the position of men is higher than the position of daughters. Even in inheritance, they are not counted as heirs. In a patrilineal family, inheritance from parents is not divided and is only controlled by the eldest child. This kind of inheritance sistem in customary law is called the mayorat sistem. This means that the right to use, the right to process and collect the results is completely controlled by the eldest male child. Judging from the theory of justice, this shows that female children in indigenous communities are treated unfairly as heirs. This research aims



to analyze why daughters in the majorat inheritance system are not heirs? Then how are the rights of girls for the Lampung Saibatin indigenous community implemented unfairly? This research is field-based with data collection techniques through interviews, observation and documentation. The results of the problem analysis are that in a patrilineal kinship system, when a daughter is married she will become her husband's family and leave her parents' kinship. Meanwhile, the injustice constructed and perpetuated by this tradition has become the law for the Lampung indigenous community as well.

**Keywords: Injustice, Mayoral Sistem, Lampung Indigenous People**

## Introduction

Indonesia is a country with a highly multi-ethnic society, encompassing various cultures and ethnic groups, which has led to the emergence of different rules and laws. This pluralism has caused Indonesia to adopt various legal systems, resulting in a pluralistic legal system. One of the legal systems that has developed and been adopted into Indonesia's legal system is customary inheritance law. The inheritance laws currently in effect in Indonesia remain pluralistic, and the use of customary law in the distribution of inheritance is closely related to the kinship system.<sup>1</sup> The systems include patrilineal, matrilineal, and parental or bilateral kinship systems. The inheritance laws currently in effect in Indonesia remain pluralistic, with the use of customary law in the distribution of inheritance being closely linked to the kinship system.<sup>2</sup> The systems include patrilineal, matrilineal, and parental or bilateral kinship structures. The collective system is when heirs receive the inheritance collectively from the deceased, without individual division. The mayorat system involves ancestral property that is not divided and is solely controlled by the eldest child. This means that the eldest child has exclusive rights to use, manage, and benefit from the property, along with the responsibility to care for and support their younger siblings, both male and female, until they are able to be self-sufficient. The individual system is when the inheritance is divided and can be individually owned, meaning each heir has the right to use, manage, and enjoy the property or transfer it, especially after the deceased has passed away. Observing the Lampung Saibatin indigenous community's practice regarding inheritance distribution, where daughters are not considered heirs, reveals a contradiction with the principles of justice that should be afforded to daughters in the Lampung Saibatin community. Maintaining customary law, on one hand, is an inevitability. However, allowing the injustice of denying daughters their inheritance rights also contradicts the principle of

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<sup>1</sup> Eman Suparman, *Hukum Waris Indonesia* (Bandung: Rafika Aditma, 2014).

<sup>2</sup> Suparman.



fairness. Therefore, the author is interested in conducting research on the position of daughters within the mayorat inheritance system in the Lampung Saibatin community.

So far, research discussing the mayorat inheritance system in the Lampung Saibatin community has addressed several issues. First, Bina Yusha's work discusses the position of women in inheritance distribution within the Lampung Saibatin indigenous community. The results of this research indicate that daughters do not hold the status of heirs. In the Lampung Saibatin indigenous community, daughters receive inheritance based on their position within the family clan<sup>3</sup>. Second, Nusirwan wrote about the distribution of inheritance in the Lampung Saibatin indigenous community from the perspectives of Islam and gender. The results show that the inheritance system prioritizes male children. This distribution of inheritance is not in line with Islamic law and tends to disadvantage women<sup>4</sup>. Third, Ahmad Baihaqi focuses on the impact of the mayorat inheritance system in the Lampung Saibatin community. The results indicate that the inheritance system prioritizes the eldest male child, who inherits both the property and the title. This system of distribution is accepted by both the family and the community<sup>5</sup>. Thus, the focus of the writings is on the injustice of the inheritance distribution system within the Lampung Saibatin indigenous community.

### **Research Method**

This research is a field study with a descriptive-analytical approach using anthropological methods. It utilizes both primary and secondary data collected through interviews, documentation, and observation. The researcher interviewed 6 informants, including 3 customary leaders, 2 community members, and 1 religious figure. Data analysis employs qualitative techniques with a deductive approach, starting from general theories and applying them to specific cases, including Islamic law. The researcher then interprets the data and draws conclusions.

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<sup>3</sup> Bina Yusha, "Kedudukan Anak Perempuan Dalam Sistem Pewarisan Pada Adat Ulun Lampung Saibatin Di Kecamatan Pesisir Tengah Kabupaten Pesisir Barat" (Skripsi, Bandar Lampung, Universitas Lampung, 2022).

<sup>4</sup> Nusirwan, "Pembagian waris adat Suku Sai Batin Lampung dalam perspektif hukum islam dan gender" (Tesis, Jakarta, UIN Syarif Hidayatullah Jakarta, 2019).

<sup>5</sup> Ahmad Baihaqi, "Sistem Kewarisan Mayorat Laki-Laki Dalam Perspektif Hukum Islam Dan Pengaruhnya Terhadap Masyarakat Muslim (Studi di Kecamatan Karya Penggawa Kab. Pesisir Barat Provinsi Lampung)," *Al Qisthas: Jurnal Hukum dan Politik* 10, no. 1 (2019), <https://doi.org/10.37035/alqisthas.v10i1.3035>.



## Discussion

### **Definition of Customary Inheritance Law, Customary Inheritance System, Customary Inheritance Process, and Islamic Inheritance Law.**

Customary inheritance law consists of the legal rules governing how tangible wealth is passed down from generation to generation<sup>6</sup> It is a body of customary law that includes guidelines on inheritance systems and principles, covering issues related to inherited property, heirs, and the process of transferring ownership and control of the inheritance from the deceased to the heirs<sup>7</sup>. Customary inheritance law includes regulations governing the process of transferring both tangible assets and intangible property from one generation to the next<sup>8</sup>. It addresses issues related to how and whether various rights and obligations concerning an individual's wealth at the time of their death will pass on to living heirs<sup>9</sup> The focus of inheritance according to Wirjono is interpreted as the method of settlement rather than the property itself. This method of settlement arises as a result of someone's death. In contrast, according to Hilman Hadikusuma, inheritance refers to the property itself, and the transfer of assets to heirs can be carried out before the person's death. While it is true that inheritance is typically considered from the perspective of Islamic law or the Civil Code after the deceased has passed away, customary law recognizes that the transfer or allocation of property to heirs can occur even before the person dies.

Customary inheritance law indeed has its own distinct characteristics that are unique to Indonesia, differing from Islamic inheritance law and Western civil law. The background for these differences is fundamentally rooted in a communal lifestyle characterized by mutual assistance to achieve harmony, balance, and peace in life. An important aspect of inheritance is that the concept of inheritance involves three essential elements, each of which is a fundamental component;

1. A deceased individual who leaves behind wealth at the time of their death.
2. One or more heirs who are entitled to receive the inherited wealth.

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<sup>6</sup> Ter Haar, *Asas-asas dan Susunan Hukum Adat (terjem. Soebekti)* (Jakarta: Pradnya Paramita, 1976).

<sup>7</sup> Hilman Hadikusuma, *Hukum Waris Adat* (Bandung: Citra Aditya Bakti, 1993).

<sup>8</sup> Soepomo, *Bab-bab Tentang Hukum Adat* (Jakarta: Pradnya Paramita, 1977).

<sup>9</sup> Wirjono Prodjodikoro, *Hukum Waris di Indonesia* (Bandung: Sumur, 1983).



3. The inheritance or estate, which is the tangible wealth left behind and transferred to the heirs<sup>10</sup> Each of these elements, in the process of transferring and conveying the wealth to the rightful recipients, always raises issues such as the following:
  - **The First Element** raises the question of how and to what extent the relationship between the deceased and their wealth is influenced by the nature of the familial environment in which the deceased lived.
  - **The Second Element** raises the question of how and to what extent there must be a family bond between the deceased and the heirs.

### Customary Inheritance System

Theoretically, there are three types of customary inheritance systems:

1. *Individual Inheritance System*: This is a system where each heir receives a portion of the inheritance to control and/or own according to their share. Once the inheritance is divided, each heir can manage, enjoy, or transfer (sell) their portion of the inheritance to other heirs, relatives, neighbors, or others. This individual system is commonly found among societies with a parental kinship system. It is present in communities such as the Javanese and other indigenous groups like the Batak, who practice the "Manjae" custom (meaning "to disperse" in Javanese), or among communities strongly influenced by Islamic law, such as the Lampung Pesisir community, which predominantly resides along the coast of Lampung<sup>11</sup>
2. *The Collective Inheritance System* is a system of inheritance where the estate is passed on and transferred from the heir to the heirs as an indivisible entity in terms of ownership and control. Instead, each heir has the right to manage, use, or benefit from the estate. This system is found in the Minangkabau region and occasionally in Batak land and Minahasa in a more limited form. In Minangkabau, this collective system applies to ancestral land that is managed collectively under the leadership or authority of the mamak (head of the heirs), where family members only have the right to use it ("ganggam-bauntuik"). A similar concept to the ancestral land in Minang is the "Tanah Dati" in the Ambon region. Tanah Dati is not divided among the heirs but is instead provided for the heirs to use, particularly for the family members of the deceased, under the leadership or management of the Dati head.

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<sup>10</sup> Surojo Wignjodipuro, *Pengantar dan Azas-azas Hukum Adat* (Bandung: Alumni, 1979).

<sup>11</sup> Hadikusuma, *Hukum Waris Adat*.



3. *The Majorat Inheritance System* is a system where, essentially, the right to control and manage indivisible property is passed on to the eldest child, who assumes the role of the head of the household or family, replacing the father or mother as the head of the family. The eldest child, in their role as the successor to the parents, is responsible for managing and caring for their younger siblings, particularly overseeing the inherited property and the well-being of younger siblings until they establish their own households and become independent within their hereditary kinship.

The strengths and weaknesses of the Majorat Inheritance System lie in the role of the eldest child as a replacement for the parents in managing and utilizing the family's wealth for the benefit of all family members. A responsible eldest child can maintain family unity and harmony until all heirs reach adulthood and are able to establish their own households. The position of the eldest child in relation to the inherited property is merely as a steward or trustee of the parents' assets, constrained by family consensus based on the principle of mutual aid for the common good. Thus, the eldest child is not the personal owner of the inherited property. The Majorat System is divided into two types, namely:

1. Male Majorat, as practiced in the Pepadun customary community of Lampung.
2. Female Majorat, as practiced in the Semendo customary community of South Sumatra.

When linking the inheritance system to the principle of lineage, Hazairin states, "The individual, collective, or majorat nature of inheritance law does not necessarily directly reflect the form of society in which the inheritance law applies. This is because individual inheritance systems can be found not only in bilateral societies but also in patrilineal societies such as in Batak land. In Batak land, one might also encounter majorat and limited collective systems in various places."

### **Majorat Inheritance**

*The Majorat Inheritance System* is a system where, essentially, the right to control and manage indivisible property is passed on to the eldest child, who assumes the role of head of the household or family, replacing the father or mother as the head of the family. The eldest child, in their role as the successor to the parents, is responsible for managing and caring for their younger siblings, particularly overseeing the inherited property and the well-being of younger siblings until they establish their own households and become



independent within their hereditary kinship. The strengths and weaknesses of the Majorat Inheritance System lie in the leadership role of the eldest child as the successor to the parents in managing and utilizing the family wealth for the benefit of all family members. A responsible eldest child can maintain family unity and harmony until all heirs reach adulthood and are able to establish and manage their own households.

### **Laws and Principles of Inheritance in Islam**

The principles of inheritance in Islam are as follows:

#### 1) Ijbari Principle

The principle of *ijbari* in Islamic inheritance law means that the transfer of property from a deceased person to their heirs occurs automatically according to the decree of Allah, without being dependent on the wishes of the deceased or the heirs. The element of *ijbari* in the Islamic inheritance system does not impose a burden on the heirs, as Islamic law stipulates that heirs are only entitled to the estate left behind and are not obligated to cover the debts of the deceased. Their obligation is merely to assist in settling the deceased's debts with the estate left behind, and they are not required to use their own resources to pay off these debts. In contrast, the Dutch Civil Code (BW) allows for the possibility of renouncing inheritance rights, as accepting the inheritance might come with the risk of having to settle the deceased's debts<sup>12</sup>. From the perspective of the deceased, *ijbari* means that they do not need to think about or plan anything regarding their property before passing away, as their property will automatically be transferred to their heirs upon their death. The principle of *ijbari* in Islamic inheritance law can be observed from several aspects: the aspect of the transfer of property, the amount of property transferred, and the individuals to whom the property is transferred<sup>13</sup>. The element of *ijbari* in the transfer of property from the deceased to their heirs can be seen in the Qur'an, Surah An-Nisa, verse 7, which explains that both men and women have a share of the inheritance from the estate of their parents and close relatives. From the term *nasib* or share, it is understood that within the estate left by the deceased, there is a portion or right for the heirs. Therefore, the deceased does not need to promise anything to the heirs before passing away. Similarly, the heirs do not need to

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<sup>12</sup> Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Prenada Media, 2004).

<sup>13</sup> Syarifuddin.





ask or request anything from the (potential) deceased<sup>14</sup> The *ijbari* aspect in terms of quantity means that the share or right of the heirs in the inheritance has been clearly defined by Allah, so neither the deceased nor the heirs have the authority to add to or reduce what has been predetermined. Each party is bound by what has been established. This is reflected in the term *mafrudan*, which originally means "determined" or "calculated." What has been determined or calculated by Allah must be implemented by His servants. The obligatory nature inherent in this term reminds people to fulfill the inheritance rights as prescribed by Allah in the Qur'an.

Islamic inheritance law distinguishes the size of each heir's share according to their needs in daily life, while also considering their proximity of kinship to the deceased. The specified shares of the inheritance are 2/3, 1/2, 1/3, 1/4, 1/6, and 1/8<sup>15</sup> These provisions are fixed as they are derived from the Qur'an and are *ta'abbudi* (a matter of religious obligation) that must be implemented according to these regulations. The religious value in Islamic inheritance law lies in these fixed shares<sup>16</sup> Although the rights and shares of heirs are precisely determined, Islamic inheritance law still permits a person to allocate up to 1/3 of their estate to individuals of their choice through a will. This allocation is allowed but is limited to a maximum of 1/3 of the estate.<sup>17</sup> Although the rights and shares of heirs are precisely determined, Islamic inheritance law still allows a person to transfer up to one-third of their estate to individuals of their choice through a will. This transfer is permitted but is limited to a maximum of one-third of the estate<sup>18</sup>, The remaining portion of the estate is the rightful share of the heirs according to the law.

## 2) Bilateral Principle

In Islamic inheritance law, the bilateral principle means that an individual receives inheritance rights or shares from both sides of the family: from paternal relatives and from maternal relatives. This principle ensures that inheritance is recognized and

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<sup>14</sup> Zainuddin, *Pelaksanaan Hukum Waris di Indonesia* (Jakarta: Sinar Grafika, 2008).

<sup>15</sup> Ahmad Rofiq, *Fiqh Manaris Edisi Revisi* (Jakarta: Raja Grafindo Persada, 2002).

<sup>16</sup> Ahmad Azhar Basyir, *Hukum Waris Islam* (Yogyakarta: UII Press, 2004).

<sup>17</sup> David S. Powers, *Peralihan Politik Kekayaan Kritik Historis Hukum Waris*, terj. Arif Maftubin (Yogyakarta: LKiS, 2001).

<sup>18</sup> Ibnu Mas'ud dan Zainal Abidin S, *Fiqh Madzhab Syafi'i (Edisi Lengkap) Muamalat, Munakahat, Jinayat* (Bandung: Pustaka Setia, 2000).





distributed across both the male and female lines of descent. This principle has two dimensions of mutual inheritance as outlined in the Qur'an, specifically in Surah An-Nisa, verses 7 and 11. For instance, if the deceased has no children and parents, siblings can inherit from both paternal and maternal relatives. This principle can be detailed as follows:

- a. The dimension of mutual inheritance between children and their parents is emphasized in the Qur'an. In Surah An-Nisa, verse 7, it is stated that both males and females are entitled to inherit from their mother and father. Additionally, Surah An-Nisa, verse 11, confirms that daughters are entitled to inherit from their parents just as sons do, though the share of a son is equivalent to that of two daughters. Furthermore, it is specified that both the father and mother have the right to inherit from their child, whether the child is male or female, if the deceased leaves behind children<sup>19</sup>
- b. The dimension of mutual inheritance among siblings is applicable when the deceased has no descendants or parents. The position of siblings as heirs is outlined in the Qur'an, Surah An-Nisa, verse 12, which states that if a man dies and has siblings, those siblings (both brothers and sisters) are entitled to inherit from his estate. Similarly, if a woman dies and has siblings, those siblings (both brothers and sisters) are also entitled to inherit from her estate. This illustrates that both male and female siblings have inheritance rights regardless of whether the deceased was male or female.<sup>20</sup>

### 3) Individual Principle

The individual principle in Islamic inheritance law means that the inheritance can be divided among the heirs for individual ownership. In practice, the entire estate is appraised and then distributed to each heir according to their respective shares. Each heir is entitled to their portion without being bound to the shares of other heirs, allowing them to receive their rights and fulfill their responsibilities independently.<sup>21</sup> The collective inheritance model found in certain traditional societies does not align with Islamic teachings. This is because, in the execution of collective inheritance laws, there is

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<sup>19</sup> Amir Syarifuddin, *Pembaruan Pemikiran dalam Hukum Islam* (Padang: Angkasa Raya, 1990).

<sup>20</sup> Zainuddin, *Pelaksanaan Hukum Waris di Indonesia*.

<sup>21</sup> Syarifuddin, *Hukum Kewarisan Islam*.



a risk—whether intentional or not—of misappropriating the property of orphans, which is strictly prohibited by Islamic principles.

#### 4) Balanced Justice Principle

The principle of balanced justice in Islamic inheritance law means that there is a balance between the rights obtained and the needs and responsibilities in fulfilling obligations. This principle ensures that there is equity between the rights received and the duties required. For example, both men and women receive rights proportional to their responsibilities within the family and society. In Islamic inheritance law, the principle of two-to-one is observed, meaning that a male heir receives twice the share of a female heir. This is in accordance with Allah's decree in Surah An-Nisa (4:11), the translation is: “Allah has decreed for you concerning (the inheritance of) your children: a son's share is equal to that of two daughters.”<sup>22</sup> From the perspective of the share received, there is indeed a disparity. However, this does not mean that it is unjust, because justice in Islam is not only measured by the amount received but also related to usefulness and need. Generally, it can be said that men require more material resources than women. This is because men—according to Islamic teachings—bear double responsibilities: for themselves and their families, including women, as explained by Allah in Surah An-Nisa (4:34). The translation is: “Men are the protectors and maintainers of women because Allah has given some of them an advantage over others, and because they spend (to support them) from their means.” When the amount received is related to obligations and responsibilities, as mentioned above, it becomes clear that the benefit experienced by men is equivalent to what women experience. Although initially men receive twice the share of women, a portion of what they receive is given to women in their role as responsible caretakers. This is the concept of justice in Islam. Therefore, the absolute standard of justice is religious justice, which is balanced, not just equal distribution.

#### 5) Death Principle

The Principle of the Effect of Death in Islamic inheritance law means that inheritance only occurs upon the death of an individual. Inheritance arises as a direct consequence of someone's passing away. Therefore, the transfer of a person's property to others, referred to as inheritance, happens only after the person who owned the

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<sup>22</sup> Departemen Agama RI, *Al-Qur'an dan terjemahnya* (Semarang: PT Karya Toha Putra, 2018).



property has died. This implies that a person's property cannot be transferred to others and considered inheritance while the owner is still alive. Similarly, any transfer of property from a living person to others, whether directly or intended to be executed after death, does not fall under the category of inheritance according to Islamic law.

The Principle of the Effect of Death is related to the Ijbar principle, which dictates that a person cannot arbitrarily decide how their property will be used after their death. In Islamic law, while a person can specify how their estate should be utilized through a will (*wasiat*), this is subject to certain limits. The will is considered a separate provision from the inheritance rules established in Islamic law. Therefore, while a will allows for the allocation of up to one-third of the estate, the remaining portion is distributed according to the fixed shares defined by Islamic inheritance law.

In Islamic inheritance law, there is no distinction among children regarding their rights to the inheritance of their parents based on their birth order, age, or marital status. All children, whether the eldest, middle, or youngest, whether grown or newborn, and whether married or single, have a right to their parents' estate. However, the size of the share each child receives is differentiated according to the responsibilities and duties they must fulfill within the family. For example, a son who is responsible for family support receives a larger share than a daughter who is not burdened with such responsibilities. The individual nature of Islamic inheritance aligns with human nature. Humans are naturally inclined to accumulate wealth, possess it, and may be reluctant to spend it for the benefit of others. This desire for wealth is inherent, and even after acquiring a certain amount, humans often seek to acquire more. It is only after death that this pursuit of wealth ceases. In addition to being individual, Islamic inheritance is also bilateral, meaning it involves the transfer of wealth in two directions. This means that every individual inherits from both paternal and maternal lines. For instance, a man inherits from both his father's and his mother's sides, and similarly, a woman inherits from both her father's and her mother's sides.

### **Sources of Islamic Inheritance Law.**

The sources of law used as the basis for inheritance distribution in Islamic law are:

1. **Al-Qur'an:** The Qur'an provides clear guidelines for inheritance distribution, including:

Surah An-Nisa (4:7)



لِّلرَّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ  
وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا ٧

Meaning: *Men shall have a share of what their parents and close relatives leave, and women shall have a share of what their parents and close relatives leave, be it little or much, an obligatory share (Q.s An-Nisa' [4]: 7)*

Surah An-Nisa (4:11)

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَّيْنَ فَإِن كُن نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ فَإِن لَّمْ يَكُن لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مَن بَعَدَ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ءِآبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُم أَقْرَبُ لَكُمْ نَفْعًا فَرِيضَةٌ مِّنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ١١

Meaning : *Allah commands you concerning your children: for the male, what is equal to the share of two females. But if there are (only) daughters, two or more, their share is two-thirds of the inheritance. If there is only one daughter, her share is half. For the parents, each one of them receives a sixth of the inheritance if the deceased left children; but if the deceased left no children and the parents are the (only) heirs, the mother receives a third. If the deceased left siblings, the mother receives a sixth. (The distribution in all cases is) after the payment of legacies and debts. You do not know which of them, whether your parents or your children, are nearest to you in benefit. These shares are ordained by Allah. And Allah is All-Knowing, All-Wise. (Q.s An-Nisa' [4]: 11)*

Surah An-Nisa (4:12)

﴿وَإِلَيْكُمْ نِصْفُ مَا تَرَكَ أَرْوَاكُمُ إِن لَّمْ يَكُن لَّهُنَّ وَلَدٌ فَإِن كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مَن بَعَدَ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَتُمُ إِن لَّمْ يَكُن لَّكُمْ وَلَدٌ فَإِن كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَتُمُ مَن بَعَدَ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ وَإِن كَانَ رَجُلٌ يُورِثُ كَلَّةً أَوْ امْرَأَةً وَوَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِن كَانُوا أَكْثَرَ مِن ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مَن بَعَدَ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرَ مُضَارٍّ وَصِيَّةٍ مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ ١٢﴾

Meaning: *And for you is half of what your wives leave if they have no child. But if they have a child, then for you is one fourth of what they leave, after any bequest they may have made or debt. And for them (i.e., your wives) is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you may have made or debt. And if a man or woman leaves neither ascendants nor descendants, but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment (caused). This is an ordinance from Allah, and Allah is Knowing and Forbearing. (Q.s An-Nisa' [4]: 12)*

Surat An-Nisa' Ayat 176

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَوَلَةٌ أختٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِن لَّمْ يَكُن لَهَا وَلَدٌ فَإِن كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ وَإِن كَانُوا



إِحْوَةٌ رَجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَّاتِ يُبَيِّنُ اللَّهُ لَكُمْ أَن تَضِلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ ١٧٦

Meaning: *They ask you for a legal ruling. Say, 'Allah gives you a ruling concerning those who leave neither descendants nor ascendants as heirs. If a man dies and leaves no child but has a sister, she will have half of what he left. And he will inherit from her if she leaves no child. But if there are two sisters (or more), they will have two-thirds of what he left. If there are brothers and sisters, the male will have the share of two females.' Allah makes clear to you (His law), lest you go astray. And Allah is Knowing of all things. (Q.s An-Nisa'[4]: 176)*

2. Al-Sunnah, Hadiths that can be used as a legal basis for the distribution of inheritance include:

“Distribute the inheritance among the heirs according to the Book of Allah.” (H.R. Muslim dan Abu Dawud)

“Give those who have fixed shares their respective portions, and whatever remains should be given to the nearest male relative (‘asabah) who is most deserving (HR. Bukhari Muslim).

1. Ijma’ dan Ijtihad Ijma’ dan ijtihad of the companions, imams of mazhab, and mujtahids can be used in solving inheritance issues that have not been explicitly explained by clear scriptural texts (nash). For example:

1. The status of siblings together with the grandfather. In the Quran, this issue is not explicitly explained, except in the case of *kalalah*. However, according to the majority of the companions and imams of mazhab, who cite the opinion of Zaid bin Thabit, these siblings receive a share through *muqasamah* together with the grandfather.
2. The status of grandchildren whose father passed away before their grandfather, from whom they would inherit, and who inherit together with their father's siblings. According to the established rule, they do not receive anything because they are blocked (*mahjub*) by their father's siblings. However, according to the Egyptian Law of Inheritance, which is derived from the independent reasoning (*ijtihad*) of earlier scholars (*ulama mutaquddimin*), they are given a share based on a *wasiat wajibah*).

## Women and Law in the Traditional Society of Lampung Saibatin

Law in human life is an unavoidable necessity, especially when law is seen as a means to achieve justice. Justice is a desire of all human beings, including women. However, when the concept of justice is contextualized or grounded in a specific social condition, achieving justice becomes increasingly difficult. Many factors contribute to the emergence of



injustice, including the influence of interpretation or cultural construction. One form of injustice we encounter in society is gender injustice. Gender injustice manifests in various forms, such as: marginalization, subordination, stereotypes, violence, and workload. This aligns with the concept of progressive law as proposed by Satjipto Rahardjo<sup>23</sup> Starting from the basic philosophical assumption, law is for humans, not the other way around. Therefore, the existence of law is to serve and protect humans, not the other way around.

Law is considered an institution aimed at guiding humans towards a just and prosperous life and making them happy. Law is made for humans. Therefore, the law that is created should be humane. The discussion about justice has never ceased from ancient times to the present. Contemporary social conditions uphold the equality of status and rights for women in the name of gender. With the change in social conditions when Surah An-Nisa (4:11-12) was revealed, is the concept of the inheritance share of 2:1 between men and women still just? The issue of justice is a fundamental aspect of Islamic law, closely related to legal and social change (social engineering). According to Satjipto Rahardjo, social change is an inherent characteristic of society, as society is always evolving. Similarly, the sense of justice experienced by humans (society) can also change and develop in accordance with societal progress.

Therefore, such developments need to be addressed by Islamic law as well, which is expected to have the capability to function as social engineering or social control to shape social behavior. When women were oppressed by Jahiliyyah society, Islam firmly defended their honor and dignity. One of the efforts made to elevate the status of women is by granting them inheritance rights. In the Lampung Saibatin traditional society, the status of daughters regarding their inheritance from their parents is different. For the Lampung Saibatin community, which follows a patrilineal kinship system and employs a marriage system where most daughters, after marriage, enter their husband's family.

### **Legal Injustice in Inheritance for Daughters in Lampung Saibatin**

Why Daughters in Lampung Saibatin Tradition Are Not Considered Heirs. Based on the Double Movement theory proposed by Fazlur Rahman, we can understand that the essence of inheritance law is justice because before Islamic inheritance law came into effect,

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<sup>23</sup> “Gagasan tentang hukum progresif pertama kali muncul tahun 2002 . Gagasan itu muncul melalui artikel yang ditulis Prof. Satjipto Rahardjo pada harian Kompas dengan judul Indonesia membutuhkan Penegakan Hukum Progresif, tanggal 15 Juni 2002,” t.t.





women were never given any share of inheritance; instead, they were considered part of the inheritance to be divided. Efforts to reconstruct this are not taboo, as the historical and social context of the revelation of these texts differs from the present. This cultural difference has existed since the early days of Islam when the Quran was revealed, and the current conditions, where each generation faces different situations due to differences in time and geography, further complicate the issue. Additionally, we can also explore this through the method of *maqasid al-tasbri'*, developed by al-Syatibi, which states that Sharia aims to achieve human welfare in this world and the hereafter.

Therefore, by combining the theory of *maqasid al-tasbri'* and justice as the essence of Islamic inheritance law, it is possible that the 2:1 ratio outlined in Islamic inheritance law could be adjusted to 1:1. Justice is a desire of all human beings, including women. However, when the concept of justice is contextualized or grounded in a specific social condition, achieving justice becomes increasingly difficult. Many factors contribute to the emergence of injustice, including the influence of interpretation or cultural construction. One form of injustice we encounter is gender injustice. Essentially, the core teaching of every religion, particularly Islam in this case, is to advocate and uphold the principles of the Quran as fundamental principles or moral guidelines regarding justice, which includes the promotion of economic, political, cultural, and gender justice. Issues arise as societies evolve and types of injustice also develop with the times. In this context, to understand and analyze what is just and unjust, and how mechanisms of injustice become foundational principles of religion, one needs analytical tools or may need to borrow analytical methods from social sciences, political science, and economics.

This observation is also accurate, considering that religious teachings, particularly Islam, advocate for truth and justice. The Lampung Saibatin traditional community has historically adhered to and respected the values of Islamic law. However, in the reality of Lampung Saibatin traditional society, as Muslims, they also have customary laws inherited from their ancestors that are still in effect today. These long-standing laws reflect a strong male dominance in both public and domestic roles. In contrast, a matrilineal system traces lineage through the mother, where women's status is higher compared to men's. In families that follow a bilateral or parental lineage system, lineage is traced through both paternal and maternal lines, with no distinction in inheritance. All children are considered heirs to their parents. Such conditions have persisted throughout human civilization's history. Therefore, it is not surprising that this is often regarded as something natural or inherent.





Law in human life is an unavoidable necessity, especially when law is seen as a means to achieve justice. Justice is a desire of all human beings, including women. However, when the concept of justice is contextualized or grounded in a specific social condition, achieving justice becomes increasingly difficult. Many factors contribute to the emergence of injustice, including the influence of interpretation or cultural construction.

Justice is a spiritual need for every human being. Issues of justice are perennial, existing throughout human life. Muslihuiddin, in his dissertation titled "Philosophy of Islamic Law and The Orientalis" (1986), states that the ideals of justice have been formulated by legal thinkers in various ways, and we see many theories that differ from one another, each claiming absolute truth. The elaboration of justice theories from earlier philosophers, such as Plato, Aristotle, Hans Kelsen, Herbert Spencer, W.R. Sorley, Thomas Aquinas, and others, results in the conclusion that justice demands freedom, equality, and basic rights aligned to protect humanity in obtaining as much as possible for the common good. Justice can be divided into two categories: individual justice and social justice. Individual justice depends on the good or bad will of each individual. In contrast, social justice is dependent on the power structures within society, which exist in political, economic, social, cultural, and ideological spheres.

Sociologically, law and customary law are part of culture. Culture is a guideline for behavior that provides standards for what should be done, what is prohibited, and what is allowed or not allowed. Value systems generate guidelines for psychological processes that manifest as thought patterns, which determine human attitudes. These attitudes shape norms, which then regulate human behavior. Law is part of a system of norms that is sociologically created and reinforced by institutions or authorities. Quoting Scholten's opinion, Soepomo argues: "Every law is a distinct system because it encompasses regulations that form a unity based on a unified way of thinking.

A customary legal system is an integral part of the overall social system. The basis of customary law is the social system that serves as its framework, traditionally established in a spontaneous and institutionalized manner, containing elements of voluntary reciprocity between villagers and the village head/government as well as village deliberations. This is to meet both incidental and ongoing village needs to enhance collective welfare, both material and spiritual. Law in human life is an unavoidable necessity, especially when law is seen as a means to achieve justice. Justice is a desire of all human beings, including women. However, when the concept of justice is contextualized or grounded in a specific social



condition, achieving justice becomes increasingly difficult. Many factors contribute to the emergence of injustice, including the influence of interpretation or cultural construction. One form of injustice we encounter is the inequality in inheritance distribution within the Lampung Saibatin traditional society. Therefore, the existence of law is meant to serve and protect humans, not the other way around. Law is considered an institution aimed at guiding humans towards a just and prosperous life and making them happy.

Law is made for humans. Therefore, the law created should be humane. Issues of justice are perennial, existing throughout human life. Muslihuddin, in his dissertation titled "Philosophy of Islamic Law and The Orientalis" (1986), states that the ideals of justice have been formulated by legal thinkers in various ways, and we see many theories that differ from one another, each claiming absolute truth. The elaboration of justice theories from earlier philosophers, such as Plato, Aristotle, Hans Kelsen, Herbert Spencer, W.R. Sorley, Thomas Aquinas, and others, results in the conclusion that justice demands freedom, equality, and other basic rights that are harmonized to protect humanity and ensure the greatest possible benefit for the common good.

The pursuit of justice becomes a universal legal standard that can manifest anywhere and anytime, in accordance with the nature of Islam's revelation to the world. Additionally, the principle of justice is one of the principles found in the Quran, alongside the principles of absoluteness and individuality. The principle of justice in Islamic inheritance law involves the concept of balance between the rights acquired and the inheritance received with the duties or responsibilities that must be borne or fulfilled among the heirs.

Therefore, the meaning of justice in Islamic inheritance law is not measured by the equality of status among heirs, but rather determined by the extent of responsibilities or burdens they must bear. The pursuit of justice becomes a universal legal standard that can manifest anywhere and anytime, in accordance with the nature of Islam's revelation to the world. Additionally, the principle of justice is one of the principles found in the Quran, alongside the principles of absoluteness and individuality. The principle of justice in Islamic inheritance law involves the concept of balance between the rights acquired and the inheritance received with the duties or responsibilities that must be borne or fulfilled among the heirs. Thus, justice in Islamic inheritance law is not assessed by the equality of status among heirs but by the extent of their respective burdens or responsibilities.

For the Lampung Saibatin traditional society, the inheritance system follows a primogeniture model, where inheritance is passed down to the eldest male. This system is



similar to a collective inheritance system, but the transmission and delegation of control over undivided property are entrusted to the eldest son, who assumes the role of head of the household or family leader, replacing the position of the deceased father or mother. For the Lampung Saibatin community, this means the eldest son inherits not only the responsibility for the inherited property but also for the well-being of his younger siblings until they are capable of supporting themselves. In the Lampung region, the management and control of inherited property are handled by the *anak punyimbang*, which is the eldest son from the senior wife. The strengths and weaknesses of the primogeniture inheritance system lie in the leadership of the eldest son, who, as the successor to the deceased parents, manages the family's wealth and uses it for the benefit of all remaining family members.

In the inheritance process within Lampung customary law, there is almost never an adat court session related to inheritance disputes. The concept of a lawsuit, as regulated by Western civil law where heirs file claims against the deceased, is not recognized in Lampung customary law. This is because the fundamental principles underlying the succession of customary inheritance law are divinity, harmony, kinship, togetherness, mutual cooperation, and consensus. Inheritance distribution is carried out peacefully and amicably, taking into account the specific circumstances of each heir. In the patrilineal kinship system of Lampung, daughters generally do not inherit. Married daughters who move to their husband's family, referred to in Lampung Pesisir as “kajong” or “suami,” usually receive inheritance from their parents in the form of a house and/or a complete set of household goods as a gift to the daughter and her future husband. Additionally, family or parental policies often allocate specific roles and portions of inheritance to daughters. A particular situation arises when a family has no sons but only daughters; in such cases, customary adoption and a traditional marriage known as *semenda* (or *ngakuk ragah*) can occur. This means that a marriage takes place because the family has only daughters. The daughter marries a man who then joins her family, and this arrangement continues during the marriage to ensure the continuation of the wife's family lineage.

## **Conclusion**

The reason daughters in the Lampung Pesisir community do not inherit their parents' property is that the Lampung Saibatin traditional society follows a patrilineal kinship system. From the perspective of justice, both under Islamic law and positive law, daughters should also receive a share of inheritance from their parents. However, because



customary law has become an entrenched tradition, the community views this tradition as a binding law. Consequently, the injustice perpetuated by this tradition becomes a de facto law for the Lampung Saibatin community. Therefore, the concept of justice in Islamic inheritance law and Lampung Saibatin customary inheritance law is not measured by the equality of status among heirs but by the extent of responsibilities or burdens. In Lampung Saibatin customary law, the burden of responsibility falls on the sons, who are accountable for managing all the inherited family wealth. In contrast, daughters are not obligated to manage their parents' inheritance because their responsibilities shift to their husbands

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