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Legal Protection of Women in Family Inheritance Disputes

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Abstract
This study examines the legal protection of women in family inheritance disputes in Indonesia, situating inheritance rights at the intersection of legal pluralism, access to justice, substantive equality, and international human rights standards. Using a qualitative socio-legal approach, it combines doctrinal analysis of legislation, judicial decisions, and legal scholarship with an empirical examination of how inheritance disputes are resolved. The findings demonstrate that women's legal protection cannot be assessed solely through formal recognition of inheritance rights or the proportion of inherited assets received. Instead, the interaction among Islamic law, customary law, state law, familial practices, and formal and informal dispute-resolution mechanisms produces differentiated levels of protection shaped by interpretative authority, legal literacy, documentary evidence, economic capacity, familial power relations, institutional accessibility, and effective enforcement. While legal pluralism may expand women's normative options, it can also reproduce structural inequalities, leaving access to legal norms and dispute-resolution forums uneven. The study conceptualises legal protection as a rights-realisation continuum encompassing formal recognition, legal awareness and capability, meaningful participation, effective remedies, and actual control over inherited assets. It advances a substantive equality framework that emphasises gender-responsive adjudication, strengthened legal assistance, procedural safeguards in family mediation, asset transparency, and effective enforcement mechanisms. The study contributes to socio-legal scholarship by demonstrating how legal pluralism can be reconciled with non-discrimination and the substantive realisation of women's inheritance rights.

Keywords: *Access to justice, Inheritance disputes, Legal pluralism, Legal protection, Substantive equality*

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INTRODUCTION

Inheritance is one of the primary mechanisms through which wealth, ownership, economic resources and social status are passed down across generations within a family (Atkinson, 2025). Consequently, inheritance is not merely about distributing assets after a person's death; it also determines how much family members can access assets that underpin their long-term economic security and independence. For women, access to inheritance matters more because ownership of land, homes, capital, and productive assets can shape their ability to maintain a decent standard of living and cope with structural changes. This issue becomes increasingly complex in Indonesia because inheritance law operates within a pluralistic framework. No single inheritance law regime applies uniformly across Indonesian society.

Indonesia has ratified the Convention on the Elimination of All Forms of Discrimination against Women through Law No. 7 of 1984, thereby making the principle of eliminating discrimination against women an integral part of the national normative framework. CEDAW positions equality in family relations and economic rights as an inseparable part of the protection afforded to women (Karimullah, 2026b; Manjoo & Beninger, 2024). General Recommendation No. 21 even emphasises the importance of inheritance issues, as inequalities in rights to wealth following the death of a family member can affect women's ability to live independently and with dignity (Siregar et al., 2026). Furthermore, General Recommendation No. 33 frames access to justice as a multidimensional concept that extends beyond the mere existence of courts to encompass justiciability, availability, accessibility, high quality, the provision of remedies, and the accountability of justice systems.

This urgency becomes all the more clear when the CEDAW Committee, in its concluding observations on Indonesia's 2021 periodic report, specifically expressed concern regarding provisions and practices deemed to still discriminate against women in matters of inheritance rights (Muttaqin et al., 2025). The Committee urged Indonesia to ensure equal inheritance rights whilst eliminating customary practices that discriminate against women in land ownership. At the national level, institutional developments within the judiciary have, in fact, demonstrated efforts to strengthen a gender perspective. Supreme Court Regulation No. 3 of 2017 on Guidelines for Adjudicating Cases Involving Women in the Legal System applies to women involved in legal proceedings within the Supreme Court's judicial system, including civil cases and cases in religious courts.

The literature on women's inheritance in Indonesia has expanded considerably, but reveals several differing perspectives. Studies on the Indonesian inheritance system generally indicate that the coexistence of Islamic law, civil law, and customary law produces different conceptions of asset distribution and the status of female heirs (Malik et al., 2025; Yusmita et al., 2025). Some studies compare Islamic law, civil law, matrilineal customary law, and gender-equality perspectives, highlighting the complexities that arise from each system's different normative bases (Alhaq et al., 2025; Karimullah et al., 2024; Kobko-Odarii et al., 2025). Other studies use the 'triangular concept of legal pluralism' to show that interactions between state and customary law

can create disparities affecting women, particularly in patrilineal communities where sons are prioritised in inheritance (Firmansyah & Nas, 2024; Jalaludin, 2024).

A socio-legal approach provides a more nuanced understanding of this issue; studies on legal pluralism and gender justice in inheritance cases in Indonesia reveal that the courts serve as an arena where various legal norms compete, are negotiated, and are sometimes reconstructed (Karimullah & Sugitanata, 2024; Suyahman et al., 2025). The study found that, in certain situations, judges can employ progressive reasoning to achieve justice, while in others they are constrained by a more textual approach to the law. Other recent studies further underscore this complexity by examining the implementation of women's inheritance rights within the patrilineal Karo community through court rulings, and highlight the crucial role of judges in reconciling the evolution of customary law with the principle of gender equality (Rachelninta & Sulastri, 2025). Some studies compare the Indonesian inheritance system with several other jurisdictions and highlight the tension between domestic legal pluralism and the standards for the protection of women's rights under CEDAW (Alhaq et al., 2025; Fathony et al., 2024).

The research gap in this study thus lies in the lack of an adequate explanation that integratively links legal pluralism with the effectiveness of women's protection throughout the entire process of family inheritance disputes. The existing literature has described the diversity of norms, differences in the status of heirs, specific customary practices, and the relatively strong role of judges; however, it remains limited in explaining how these various layers operate sequentially and influence one another from the moment a claim to an inheritance arises, through negotiations within the family, the selection of legal systems and forums, dispute resolution processes, judicial reasoning, and finally women's ability to control and enjoy assets following the resolution of the conflict. This gap matters because the success of legal protection cannot be measured merely by the existence of norms or by securing judgements that recognise women's rights. A formally favourable judgement does not necessarily deliver substantive justice if obstacles to enforcement, control over assets, social acceptance, or the sustainability of women's economic rights remain after the dispute is resolved.

This framework also necessitates that the concept of legal protection be understood more broadly as a continuum encompassing normative recognition, access to justice mechanisms, adjudication processes free from gender bias, the availability of effective remedies, and women's actual ability to benefit from such protection (Karimullah et al., 2023). This approach is also vital to avoid overly simplistic generalisations regarding religion or customary law as sources of injustice. Islamic law, customary law, and state law are not homogeneous categories, and each is interpreted, negotiated, and transformed in practice. Even within communities that share the same kinship system, inheritance distribution may differ because of changes in family economics, migration, education, asset ownership structures, and the development of legal awareness (Sugitanata et al., 2024).

In light of these issues, this study aims to analyse how legal protection for women in family inheritance disputes in Indonesia is constructed and how effective it is by

examining the interplay between legal pluralism, dispute resolution processes, women's access to justice, and the orientation towards substantive equality in the protection of inheritance rights. This study seeks to explain not only how the law establishes women's position as heirs, but also how various legal norms are negotiated when conflicts arise, the factors that determine women's ability to defend their rights, and the extent to which dispute resolution institutions can transform formal recognition into effective protection (Sugitanata et al., 2023). This study brings together the debate on Indonesian family law with international discourse on women's economic rights and access to justice, while acknowledging the pluralistic nature of the national legal system.

METHODS

This study employs a socio-legal approach with a qualitative design, integrating doctrinal and empirical analysis to explain the gap between the normative recognition of women's inheritance rights and the effectiveness of their protection in the context of family conflicts in Indonesia. This approach was chosen because legal protection depends not only on the substance of the regulations, but also on the interaction among legal pluralism, family power relations, access to justice, the reasoning of dispute-resolution institutions, and women's ability actually to enjoy their inheritance rights. The focus of the study is operationalised through five dimensions: the normative recognition of women's rights; the choice of and interaction between Islamic law, customary law and civil law; barriers to access to dispute resolution; the responses and reasoning of legal institutions; and the effectiveness of post-dispute asset recovery and control.

Data sources consist of primary legal materials in the form of relevant legislation and court rulings, secondary legal materials in the form of academic literature, and empirical data from women who have experienced inheritance conflicts, judges or legal practitioners, and figures or mediators with an understanding of inheritance dispute resolution, selected purposively based on their involvement and capacity to provide information until a sufficient level of information was attained. Data were collected through document review and semi-structured interviews using an interview guide developed from the frameworks of legal pluralism, access to justice, and substantive equality. Experts reviewed them to ensure conceptual consistency. (Adongo & de Paul Kanwetuu, 2024). Data validity was ensured through triangulation of sources and methods, member checking of relevant empirical findings, analysis traceability, and systematic comparison between legal norms, court rulings, and participants' narratives.

RESULTS AND DISCUSSION

Legal Pluralism and Gender Justice in Inheritance Disputes

A rule's effectiveness depends not only on its formal validity, but also on social acceptance, the authority of the actors who enforce it, and the presence of competing norms. Inheritance is one of the clearest arenas for observing these dynamics. Inheritance disputes in Indonesia are spaces where various legal systems contend and negotiate, and where interactions between these normative orders can even produce

new legal configurations. These configurations matter because each legal system rests on normative structures and distributive conceptions that are not identical. The Compilation of Islamic Law, promulgated via Presidential Instruction No. 1 of 1991, includes Book II on inheritance law and serves as a key institutional reference for resolving inheritance matters among Muslims.

The Islamic inheritance system determines heirs' status through kinship, marriage, and the configuration of heirs at the time of the testator's death. (Rasyid et al., 2024). Consequently, the distribution of inheritance under Islamic law cannot, in academic terms, be reduced to the simplistic claim that every woman always receives half the share of a man. Differences in shares within specific configurations must be understood within the overall structure of the *'farā'iḍ'*, including kinship ties and the structure of economic responsibility within the family. Conversely, civil law, derived from the Civil Code, rests on a different inheritance structure, while customary law varies widely depending on kinship organisation, the nature of the estate, the social status of family members, and the evolution of community practices. This diversity means gender interacts with other legal categories and does not produce uniform distributive consequences.

Customary law cannot even be treated as a single, homogeneous normative category. Patrilineal, matrilineal and bilateral systems construct the relationships between kinship, property and group continuity in different ways (Saraswati et al., 2026). In certain patrilineal communities, men may be accorded priority because they are associated with lineage continuity and control over specific property. In other societies, the type and origin of property matter more than the heir's gender alone. Studies on Toba Batak women, for example, have long shown that the persistence of inheritance practices restricting daughters' access to land and immovable property is not solely through abstract customary rules, but is maintained through social organisation functioning as what Sally Falk Moore terms a 'semi-autonomous social field' (Jinoto, 2025; Silalahi et al., 2024). Clan associations can generate and maintain internal rules whilst simultaneously limiting the penetration of state legal reforms.

This implies that protection for women cannot be assessed solely on the formal hierarchy of norms. Theoretically, state norms may recognise women's status as equal legal subjects. Still, the ability of these norms to transform social practices is determined by their relationship with other normative orders that hold greater legitimacy in family life (Ada Tchoukou, 2025). Within a semi-autonomous social field, family members do not always perceive themselves primarily as individual legal subjects free to choose which rules to follow. They also belong to clans, indigenous communities, religious groups, and kinship networks that set normative expectations for their behaviour. This dimension highlights the limitations of applying forum shopping too simplistically. In the literature on legal pluralism, multiple legal systems can indeed allow disputing parties to bring claims before the forum offering the most favourable outcome. However, in family inheritance disputes, the ability to engage in forum shopping is not distributed equally.

Choosing a forum requires knowledge of the law, economic resources, access to legal advisers, the ability to endure protracted conflict, and the social legitimacy to bring family matters into the public sphere. Individuals with education, social networks, control over ownership documents, or control over the estate are in a different bargaining position than family members who are economically dependent or live far from the assets (Sianipar et al., 2025). This is where the relationship between legal pluralism and gender justice becomes increasingly significant. Gender justice should not be limited to mathematical equality in every distribution, nor can it be separated from whether differences in treatment perpetuate subordination, reduce women's ability to control resources, or place women in structural positions that prevent them from safeguarding their own interests (Putri et al., 2026).

Substantive equality offers a more productive framework than formal equality because it requires assessing a rule's context and actual consequences. Formal equality asks whether men and women are recognised as legal subjects. Substantive equality goes further by questioning whether social structures, procedures, interpretations, and the outcomes of applying the law enable both to enjoy effective protection. In its 2021 concluding observations on Indonesia, the CEDAW Committee specifically noted discrimination against women in inheritance rights. It recommended measures to ensure equal inheritance rights and to eliminate discriminatory practices within family relationships. The Committee also highlighted the limited access of indigenous women to land and recommended the abolition of customary practices that discriminate against women in land ownership.

These recommendations relate to legal pluralism not by reducing the entire inheritance system to a single distribution formula, but by insisting that normative diversity should not justify depriving women of their capacity as rights-holders. However, a substantive equality-based approach also requires caution to ensure that the analysis does not create an overly simplistic opposition between state law as a representation of equality and customary or religious law as a source of inequality. Socio-legal developments in Indonesia do not fully support this assumption (Ikhsan et al., 2025). State law is implemented through institutions shaped by social values, while customs and religious norms continue to be interpreted, transformed, and negotiated.

The Supreme Court's case law illustrates this dynamic. Case law compilation 3/Yur/Pdt/2018 shows a consistent trend of rulings recognising women's status as heirs in several customary inheritance disputes. The Supreme Court refers, amongst others, to Judgment No. 179 K/Sip/1961 concerning Karo customary law, Judgment No. 415 K/Sip/1970 concerning the Mandailing Batak, Judgment No. 4766 K/ Pdt/1998 concerning Bali, Judgment No. 1048 K/Pdt/2012 concerning Rote Ndao, as well as several judgments in 2017 relating to different indigenous communities. This case law is based on the principle that women have the legal standing to claim and receive an inheritance, and that customary practices which are no longer consistent with the evolving principle of equality cannot simply be upheld.

These findings align with Bowen's classic analysis of how inheritance disputes were resolved in the Gayo highlands. Drawing on the archives of two courts in Takèngën,

Bowen demonstrates how judges' approaches to managing tensions between Islam and customary law evolved from the 1960s to the mid-1990s. Judges did not simply choose one norm and reject the other; instead, they used legal reasoning to bridge the tension between the two while appealing to broader notions of consensus and justice. This shift in the courts' approach also linked to political changes, the growing legitimacy of religious courts, and changes in judges' perceptions of society's individualisation (Sugitanata & Ridwan, 2024; Wiranti et al., 2025). This study, first published in the Law & Society Review in 2000 and now available via Cambridge Core, shows that judicial reasoning is not a mechanical, deductive process. Judges are actors within legal pluralism who can select, interpret, reconcile or limit the legitimacy of specific norms.

Supreme Court Regulation No. 3 of 2017 reinforces this institutional dimension by giving courts guidelines for handling cases involving women and establishing protection against discrimination as part of constitutional rights and judicial obligations. In inheritance disputes, its relevance extends beyond how courts treat women procedurally. Gender-responsive guidelines require the adjudication process to consider whether narratives concerning the obligations of daughters, family harmony, respect for male relatives, or adherence to tradition are being used disproportionately to undermine women's legal claims.

This distinction matters in family dispute resolution, as most inheritance disputes do not begin in court. Family deliberations, mediation by relatives, traditional leaders, religious figures, or community representatives often serve as the first forum where rights are interpreted and distributed. Such informal forums have advantages: they are relatively accessible, preserve social relationships, and allow more flexible resolutions than formal adjudication. However, flexibility is not justice. Without attention to power dynamics, the consensus-building process can create a false equivalence between agreement and justice. A woman who relinquishes her share to prevent family discord has not necessarily decided under conditions of bargaining equality.

The concept of relational autonomy helps broaden the assessment of freedom in resolving inheritance conflicts. Autonomy in a family context does not mean decisions must be made without considering relationships with others, since family relationships shape human preferences. A more relevant question is whether these relationships enable women to form and express their preferences without domination, intimidation, or disproportionate social consequences. From this perspective, family deliberation and reconciliation can still be upheld as legitimate mechanisms. Still, the legitimacy of their outcomes depends on procedural fairness, informed participation, and the absence of coercion. Such an analysis moves gender justice beyond the dichotomy between litigation, seen as modern, and deliberation, seen as traditional.

Normative contestation in inheritance disputes also unfolds asymmetrically, as parties may employ different discourses of legitimacy to bolster their claims (Strating, 2023). One party may invoke religion, another customary law, another ownership documents or state jurisprudence, while arguments about family harmony may be used to avoid formalising the dispute. Within the framework of legal pluralism, these strategies can be understood as norm mobilisation. Norms are not merely objective

rules, but argumentative resources used to shape claims. Individuals with higher levels of legal literacy can better identify favourable norms, construct legal narratives, obtain documents, and select forums.

Legal pluralism reveals its paradoxical nature. On the one hand, the plurality of norms can create an adaptive capacity that enables the law to respond to the diversity of kinship systems, religious beliefs and the social character of Indonesian society. This diversity also opens possibilities for more contextual interpretations and allows the search for solutions when a particular legal order cannot resolve a specific conflict. On the other hand, this plurality can create normative uncertainty and enable the strategic invocation of norms when more powerful actors use specific legal systems to maintain an asset distribution that favours them.

Justice for women in inheritance matters must be understood as a continuum rather than as a single outcome at the moment the inheritance share is determined (Heriandita et al., 2025). The first stage concerns recognition: whether women are recognised as subjects with a legal interest in the estate. The next stage relates to voice: whether women can participate meaningfully in negotiations and articulate their claims without domination. The subsequent stage concerns access to forums and fair adjudication when conflicts cannot be resolved internally. Protection then requires effective remedies and enforceability so that legal recognition can be translated into actual control over assets.

This continuum approach brings legal pluralism and substantive equality together in a more operational manner. Pluralism explains the sources and interactions of various norms, whilst substantive equality provides a standard for evaluating the consequences of those interactions on women's position. (McGovern, 2024). The relationship between these two concepts prevents two forms of reductionism simultaneously. Firstly, legal diversity is not romanticised as an automatic representation of a community's identity and autonomy. Secondly, equality is not reduced to legal uniformity that disregards social and normative contexts. This also explains why family power relations must be central to the analysis, rather than treated as an external factor after the law has been applied.

The family is a normative space where ownership, contributions, moral obligations, gender, seniority and kinship acquire meaning before disputes become legal matters (Kobko-Odarii et al., 2025). Family members who hold land deeds, know the location of assets, control the family business, or live with their parents in the run-up to the testator's death may possess a significant informational advantage. Such positions can influence the estate inventory and determine what counts as part of the estate. Meanwhile, married women living outside their community may face the narrative that they have become part of their husband's family, meaning that claims to assets from their family of origin are deemed less legitimate. These patterns show that property rights are always relational and that formal legal status is only one component of power distribution.

Pluralism can be emancipatory when multiple sources of norms create space for women to challenge exclusionary rules, access alternative forums, or promote

reinterpretation of practices that are no longer legitimate. Conversely, pluralism can be exclusionary when the lack of a clear hierarchy of norms allows dominant actors to selectively invoke rules that maintain control over assets. The outcome depends on the distribution of interpretative authority, legal capacity, bargaining power, institutional accessibility, and the enforceability of remedies. This structure explains why two conflicts with similar normative characteristics can yield vastly different levels of protection for women. From this perspective, legal protection for women in inheritance disputes should be reconceptualised as a plural legal system's capacity to transform formal recognition into substantive control over inherited resources.

Women's Access to Justice in the Resolution of Inheritance Conflicts

The distinction between the existence of a right and the capacity to realise that right becomes crucial in inheritance conflicts because disputes do not unfold solely within the normative sphere, but rather within family relationships shaped by economic dependence, seniority, kinship authority, unequal legal knowledge, control over documents, control over assets, and social expectations regarding how a woman ought to behave towards her family (Lenggono, 2025). The access to justice perspective therefore shifts the question from whether women have inheritance rights to whether they have the practical capacity to recognise the issues they face as legal matters, articulate their claims, obtain adequate information and support, choose dispute resolution mechanisms, navigate legal proceedings without disproportionate burdens, secure redress, and ultimately realise the economic benefits of the resulting judgement or settlement (Fattah et al., 2025).

This understanding aligns with developments in access-to-justice theory, which increasingly moves away from an institutional approach that merely measures the availability of courts, lawyers, and formal procedures. Sandefur points out that studies of access to civil justice must address two interrelated issues: who can or is willing to use the law and dispute resolution institutions, and what kind of justice they ultimately obtain. Inequality can be reproduced through the unequal distribution of resources and costs, differing subjective attitudes towards the law, and the ability of certain groups to institutionalise their interests more effectively (Yang & Zhang, 2023).

CEDAW articulates this multidimensional understanding more explicitly through General Recommendation No. 33 on women's access to justice (Sakinah et al., 2026). The CEDAW Committee identifies six interrelated components: justiciability, availability, accessibility, good quality, provision of remedies, and accountability of justice systems (Rifa'i et al., 2026). This framework shows that access is not merely about a case being technically admissible in court. Enforceable rights must be available, dispute resolution mechanisms must be accessible, proceedings must be high-quality and free from discrimination, remedies must be effective, and institutions administering justice must be held accountable. In civil law, the Committee specifically includes inheritance, land, and property rights as areas to which women must have access, and calls for removing gender-based barriers that prevent women from exercising their legal capacity.

In the Indonesian context, this issue matters more because the CEDAW Committee, in its concluding observations on Indonesia's eighth periodic report, specifically recommended measures to guarantee equal inheritance rights for women and men. However, interpreting these recommendations merely as a need to amend substantive provisions would be overly narrow. A more complex issue is how a right, once recognised, moves from the legal text into the actual lives of women. This journey is not linear; between the legal norm and its outcome lies a series of decision points that can halt a claim before it reaches a favourable resolution. Women must be aware that they have rights; possess information regarding the composition of the estate; obtain the necessary documents; have the capacity to reject a settlement that is detrimental to their interests; know which forums to utilise; finance or obtain assistance for legal proceedings; and face the social consequences of bringing family conflicts to formal forums.

The concept of legal capability helps explain why having rights does not always translate into the ability to make a claim. Legal capability refers not only to knowledge of the content of regulations, but to a combination of the ability to recognise the legal dimensions of an issue, seek information, understand the available options, communicate with institutions, mobilise assistance, manage procedures, and stand by one's decisions when faced with resistance (Rifa'i et al., 2025). In inheritance disputes, a woman may be generally aware that she is an heir but may not understand the status of a piece of land, the origin of assets, the difference between the deceased's personal property and joint property, the legal status of any previous gifts, or the consequences of the documents she is asked to sign.

Legal capability is closely intertwined with legal consciousness, which refers to the way individuals understand, interpret, and position themselves in relation to the law in their daily lives. Not all conflicts with an objective legal dimension are perceived as issues worth bringing before legal institutions. Women may view disputes as family matters that should be resolved through patience, consultation, respect for older siblings, or sacrifice for the sake of kinship ties (Yao & Wang, 2024). Therefore, the absence of a legal claim cannot automatically be interpreted as the absence of injustice. This perspective's analytical strength lies in its ability to distinguish between non-claiming by choice and non-claiming by constraint.

Women who freely choose to relinquish part of their inheritance rights to support family members in greater need are in a different position from those who relinquish their rights out of fear of ostracism, a lack of knowledge regarding the value of the assets, or an inability to challenge their brothers' decisions. The distributive outcomes of these two situations may appear identical, but their quality of fairness differs fundamentally. Therefore, consent alone is insufficient to prove fairness without considering the circumstances under which it was given.

The issue of information regarding assets is one of the critical points that is often overlooked in normative studies. Inheritance claims can only be made effectively if the heirs know what is being inherited. Control over land titles, transaction documents, bank accounts, business records, vehicle registration documents, or other

administrative documents creates a form of informational power. When only one family member controls the documents, an information imbalance may arise before the distribution issue is even raised. Inheritance disputes in Indonesia cannot be separated from issues concerning identity documents, proof of family relationships, and property certification, whilst the very process of obtaining and constructing such evidence can itself become part of the conflict.

Inequalities in access to information can also intersect with gender patterns in the management of family assets. Family members who have managed land or a business for many years have greater access to information about value, income, boundaries, and ownership status than those not involved in day-to-day management. Women who have moved away from their place of origin following marriage may find themselves in a position of informational disadvantage when the family assets from their place of origin are managed by relatives who have remained in that location. The issue is not merely whether women are listed as heirs, but whether they know the full extent of the estate to be divided. When access to information is unequal, a division process that appears consensual may in fact be built upon a fundamental asymmetry.

Economic barriers add another layer of difficulty. The costs of litigation comprise not only official court fees, but also transport, photocopying and the legalisation of documents, the measurement or valuation of assets, communication, loss of income due to attending court hearings, legal advisers' fees where used, as well as costs arising if the dispute is protracted and proceeds to the appeal or cassation stage. For women who are economically dependent on their families, these costs can transform the right to sue, which is formally available, into a choice that is, in practical terms, unrealistic. Law No. 16 of 2011 establishes legal aid for the poor as a state responsibility to realise access to justice, while PERMA No. 1 of 2014 regulates the waiver of case fees, hearings held outside court buildings, and Legal Aid Centres for the underprivileged. These mechanisms are vital infrastructure; however, effective access requires more than the mere presence or absence of assistance schemes.

Access to justice therefore depends not only on the vertical relationship between women and the state, but also on support structures that can strengthen women's capacity. Lawyers, legal aid organisations, paralegals, women's organisations, community leaders, academics and social networks can act as capability multipliers by providing information, translating legal language, assisting with documentation, or reducing the social isolation experienced by those in conflict with their families. General Recommendation No. 33 even emphasises the importance of cooperation with civil society to establish sustainable mechanisms that support women's access to justice. The role of advocates becomes increasingly important when the issue involves not only a lack of knowledge regarding procedures but also an imbalance in bargaining power vis-à-vis the party controlling the assets.

The most characteristic obstacle in inheritance disputes can, in fact, stem from the close social ties between the parties. Unlike many commercial disputes, the legal opponents in inheritance disputes are siblings, uncles, aunts, nephews, or other family members with whom the woman has a long history of relationships. The consequences

of litigation therefore extend beyond legal victory or defeat. Women may face damaged relationships, exclusion from family gatherings, the stigma of being seen as materialistic, accusations of disrespecting parents or tradition, and the loss of a support network that previously held social and economic value.

The contrast highlights what might be termed the social cost of claiming. Legal claims against strangers may mainly involve financial and procedural costs, while claims against family members can entail costs to identity and relationships. Women must weigh up not only the probability of obtaining assets, but also the likelihood of losing family support, reputation, a place to live, relationships with siblings, or access to other resources that are not formally recorded (O'Brien, 2024). The decision not to pursue legal action may therefore appear irrational from a doctrinal perspective but is entirely rational when the full range of social costs is taken into account.

Family pressure matters more when women are economically dependent on parties who also have a stake in the inheritance. Economic dependence alters the bargaining structure, as the threat of losing support may limit a woman's ability to reject an unfavourable division proposal. Studies on women's access to land in Madura demonstrate how cultural constructs that place men in a more dominant position regarding ownership can increase women's dependence on men and limit their independence (Supraptiningsih et al., 2023). The distinction between title, possession, management and benefit is crucial in evaluating the success of protection measures. A woman may formally acquire a share of land but lack physical access to it. A certificate may list her rights, yet the agricultural produce continues to be managed and enjoyed by other relatives (Tjahyadi et al., 2026). A house may form part of her inheritance, but more dominant family members control decisions about letting or selling it.

Reconstructing Legal Protection for Women through Substantive Equality and Human Rights Standards

Reconstructing legal protection for women in inheritance disputes is inadequate if understood as simply aligning national law with international standards or replacing Indonesia's diverse living legal traditions with a single, uniform model of inheritance. The complexity arises because women's inheritance rights operate at the intersection of state law, Islamic law, customary law, family norms, kinship structures, dispute resolution practices, and human rights standards, each deriving its legitimacy from different sources. In such a configuration, the more productive question is not merely whether a particular norm complies with the Convention on the Elimination of All Forms of Discrimination against Women, but how the overall architecture of legal protection can ensure that normative diversity does not result in the subordination, exclusion or loss of women's control over economic resources.

This shift matters because formal equality has limited capacity to address inequalities shaped by family structures and resource distribution that existed before the dispute arose. Formal equality essentially asks whether women and men are recognised as legal subjects and whether the law treats them through the same categories. However, treating parties entering legal proceedings identically, despite

vastly different social and economic conditions, may perpetuate or even exacerbate existing inequalities. The 1945 Constitution itself provides a broader normative foundation than formal equality alone. In addition to guaranteeing equal protection and treatment before the law through Article 28D(1) and protection against discrimination through Article 28I(2), Article 28H(2) recognises the right to special facilities and treatment to secure equal opportunities and benefits to achieve equality and justice. This constitutional framework allows equality to be interpreted not as an obligation to treat everyone identically, but as an obligation to take into account the circumstances that prevent an individual from accessing benefits that are formally available to all.

Substantive equality provides a more adequate evaluative basis for protecting women in inheritance disputes. Fredman develops substantive equality through four interrelated dimensions: redressing harm and disadvantage; overcoming stigma and stereotypes; expanding the participation and voice of marginalised groups; and accommodating differences while transforming the structures that produce inequality. This approach deliberately avoids reducing equality to a single indicator, such as identical treatment, formal opportunities, or specific numerical outcomes. Instead, equality is assessed by whether the law can transform the conditions that give rise to subordination and exclusion. In the context of inheritance, these four dimensions provide a richer analytical framework as they allow the distribution of assets to be assessed alongside women's position within the family, stereotypes regarding gender-based ownership and obligations, the ability to participate in decision-making, and the structures of asset control that determine who actually derives economic benefit (Chowdhury et al., 2026; Nazar et al., 2026).

The redistributive dimension of substantive equality requires inheritance protections to be understood within the context of broader economic inequality. Inherited assets are not merely private objects that change hands upon the testator's death, but a primary mechanism for intergenerational wealth transfer. Land, homes, businesses, savings, and productive assets can determine housing security, access to credit, the capacity to withstand economic shocks, and an individual's bargaining position within the household and community. General Comment No. 26 of the Committee on Economic, Social and Cultural Rights emphasises that secure and equal access to, use of, and control over land are closely linked to poverty eradication, a decent standard of living, housing, food, and various other economic and social rights.

These economic dimensions matter especially for women, as asset ownership can transform dependency relationships within families. UN Women highlights that women's access to inheritance rights is linked to increased autonomy and economic empowerment, whilst control over land and productive resources strengthens women's economic security and independence. (Fadilah et al., 2026). This means inheritance rights should not be viewed solely through the lens of asset distribution, but also through the lens of women's economic citizenship. Individuals who control assets have greater capacity to make decisions, take risks, and shape their economic lives than those entirely dependent on relatives for resource distribution. Consequently, inheritance fits

into a broader discourse on property rights, economic security, and women's economic empowerment.

The redistributive dimension cannot stand alone, as material inequality is often produced through stereotypes and structures of recognition. Women may be formally recognised as heirs but are still viewed as family members whose economic interests are less legitimate because they are married, receive financial support from their husbands, or are deemed irresponsible for maintaining a particular family line. In other communities, men's legitimacy to control land may be constructed through associations between masculinity, the continuity of lineage, and the duty to lead the family (Curtin et al., 2025). Such stereotypes do not always manifest as explicit legal prohibitions. They may appear in moral discourse on obedience, sacrifice, family harmony, or the duty to uphold one's good name. Within Fredman's framework, addressing inequality thus requires a dimension of recognition that actively challenges the stigmas and stereotypes which construct women as secondary economic subjects.

CEDAW provides a clear normative basis for such an approach. Article 5 of the Convention obliges States to take measures to modify social and cultural patterns based on the inferiority or superiority of either sex, as well as stereotypical roles for men and women. Contemporary guidance on implementing CEDAW also emphasises that discrimination stems not only from written rules, but from practices, ways of thinking, and social structures embedded in cultural norms. General Recommendation No. 33 subsequently links the issue of stereotypes directly to access to justice by emphasising that social and cultural barriers, stigma, patriarchal norms and gender stereotypes can prevent women from claiming their rights and obtaining effective redress (Karimullah, 2026a).

Indonesia's ratification of CEDAW through Law No. 7 of 1984 has broader significance than merely serving as evidence of Indonesia's commitment to international treaties. The ratification law explicitly proceeds from the premise that all citizens are equal before the law and in governance, and that discrimination against women must be eliminated. In the context of legal pluralism, this implies that CEDAW should serve as an evaluative framework that transcends the boundary between state law and non-state practices when those practices affect women's ability to enjoy their rights. However, using CEDAW as an evaluative framework is not the same as mechanically importing international standards or eliminating all cultural and religious variations (Tchoukou, 2025). Assuming that harmonising human rights must always lead to legal unification is a form of reductionism that is difficult to sustain in a pluralistic society (Karambiri et al., 2024). Legal systems may retain variations in concepts of kinship, distribution mechanisms, dispute resolution forums, and forms of asset management, provided those variations do not negate women's status as rights-holders, deny access to justice, or result in unjustifiable subordination.

A more appropriate reconstruction therefore requires a rights-based minimum floor rather than a uniform legal ceiling. Human rights standards set the minimum threshold that must not be breached, whilst the normative paths towards protection may remain diverse. This approach also avoids a false dichotomy between respect for

culture and the protection of women's rights (Ramadhan et al., 2026). General Recommendation No. 39 on the rights of women and girls from indigenous communities specifically recognises cultural identity, relationships with land and communities, and the rights of indigenous peoples, whilst at the same time requiring states to adopt gender, intersectional, intercultural and multidisciplinary perspectives to address discrimination (Hayatullah et al., 2026; Karimullah & Aliyah, 2023). This framework shows that respect for culture need not lead to relativism that precludes evaluating the internal distribution of power within communities. Conversely, rights-based interventions need not position culture as an obstacle to be eliminated.

A key implication of this approach is that women must be positioned not merely as objects of protection from customary or religious practices, but as actors entitled to participate in the formation and reinterpretation of norms (Ismah, 2024). This relates directly to the participatory dimension of substantive equality. Customary or religious norms are never entirely static. Norms live on through actors', institutions', and communities' interpretations. If women are systematically excluded from forums that determine the meaning of customary law, the composition of property, or the interpretation of family obligations, then the issue of equality lies not only in the outcome of distribution, but also in the process of producing norms (Ayu et al., 2026). Thus, substantive protection demands interpretive participation, that is, meaningful opportunities for women to be involved in shaping the understanding of justice that will be applied to them.

From this perspective, legal harmonisation should not be built through a vertical relationship in which state law is always positioned as a norm that corrects other laws from the outside. A more relevant model is dialogical harmonisation, which brings together state law, religion, customary law and human rights through clear normative boundaries regarding non-discrimination and non-subordination. Such dialogue does not imply that all norms carry equal weight in every conflict. Rather, it acknowledges that sustainable legal reform often requires internal legitimacy from the communities in which those norms are embedded. Reconstruction can thus occur through reinterpreting legal doctrines, developing case law, transforming customary law, strengthening women's participation, and changing institutional mechanisms simultaneously.

CONCLUSION

Legal protection for women in family inheritance disputes in Indonesia cannot be assessed solely based on formal recognition of their status as heirs. Rather, it must be understood as the capacity of a pluralistic legal system to transform normative rights into actual access, participation, redress and control over assets. The interplay between Islamic law, customary law, state law, family practices, and human rights standards shows that legal pluralism can expand the range of protection available while also perpetuating inequalities when interpretative authority, legal knowledge, economic resources, and bargaining power are not distributed equitably. These findings build on previous studies by linking legal pluralism, access to justice, legal capability, gendered

power relations, and substantive equality within a rights-realisation framework that prioritises effective protection throughout the process, from recognising rights to women's ability to enjoy the economic benefits of inheritance. In practical and policy terms, this calls for gender-responsive adjudication, stronger legal aid, transparency and documentation of assets, safeguards in family mediation, and legal harmonisation that preserves normative diversity within the bounds of non-discrimination and effective remedies. However, the study's qualitative and contextual nature limits generalisations to the entire Indonesian legal community and its inheritance configurations. Further research needs to test this framework comparatively across regions, kinship systems, types of forum, and post-judgment stages, including the effectiveness of enforcement and women's control over assets, so that inheritance protection can be evaluated not merely as a normative success, but as the legal capacity to produce substantive equality in real life.

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