



## The Harmonization of Customary, State, and Islam in the Practice of Dayak-Muslim Senganan Customary Inheritance in Sintang, Indonesia

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**Kata Kunci:**  
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Hukum Negara,  
Hukum Warisan.

**Abstract:**

The powerful Dayak-Muslim Senganan customs often interact with Islamic teachings, particularly in matters such as inheritance, as regulated by the principles of faraid. This interaction presents challenges, especially when Islamic rules need to be adapted to long-standing customary norms. Additionally, the state plays a significant role in its national legal system, acting as a mediator or law enforcer to ensure that inheritance practices align with national laws. While the issue of customary law, Islam, and the state is frequently examined from a conflict perspective, this does not apply to Dayak-Muslim customary inheritance practices in Sintang Regency, West Kalimantan Province. This article examines the interaction of these three legal systems in inheritance practices, focusing on the Dayak-Muslims of Senganan. Using Andrea J. Hoekma's socio-legal approach, which emphasizes the integration of non-conflicting laws, this study conducted in-depth interviews with customary and formal authorities. The findings reveal that customary law, state law, and Islamic law coexist harmoniously, supporting the community's interests without conflict. Furthermore, the research shows that Dayak-Muslim inheritance practices do not contradict Islamic law. These seemingly distinct legal systems can be synthesized to form an effective inheritance system within specific social and cultural contexts. This research contributes to a broader understanding of the harmonization among customary law, Islam, and the state, demonstrating a dynamic of mutual influence and understanding.

**Abstrak:**

Adat Dayak-Muslim Senganan yang kuat sering kali bersentuhan dengan ajaran Islam, salah satunya mengenai kewarisan seperti yang diatur dalam faraid. Interaksi ini menimbulkan tantangan ketika aturan Islam harus disesuaikan dengan norma adat yang telah lama ada. Selain itu, negara berperan penting melalui sistem hukum nasionalnya sebagai mediator atau penegak hukum, memastikan bahwa praktik kewarisan mengikuti undang-undang nasional. Persoalan hukum adat, Islam dan negara sering kali dikaji melalui kaca mata konflik, namun perspektif ini tidak berlaku bagi praktik pewarisan adat Dayak-Muslim di Kabupaten Sintang, Provinsi Kalimantan Barat. Artikel ini mengkaji ketiga sistem hukum dalam praktik kewarisan, khususnya di kalangan Dayak-Muslim Senganan. Artikel ini menggunakan pendekatan sosio-legal Andrea J. Hoekma, yang mengintegrasikan hukum yang tidak bertentangan. Melalui wawancara mendalam dengan para pemimpin adat dan formal, penelitian ini menemukan bahwa hukum adat, hukum negara, dan hukum Islam dapat hidup berdampingan secara harmonis, melayani kepentingan masyarakat tanpa pertentangan. Temuan penelitian juga

mengungkapkan bahwa praktik pewarisan Dayak-Muslim tidak bertentangan dengan hukum Islam. Entitas yang tampaknya saling bertentangan, namun sebenarnya dapat bersinergi untuk menciptakan sistem kewarisan yang efektif dalam konteks sosial dan kultural yang spesifik. Penelitian ini berkontribusi pada pemahaman harmonisasi antara hukum adat, Islam, dan negara yang saling memengaruhi dan memahami satu sama lain.

## A. Introduction

The issue of customary law in West Kalimantan is inseparable from the rules and norms of the Dayak tribe, which has inhabited the region for thousands of years. Although Dayak customary law is traditionally conveyed orally, the development of civilization in West Kalimantan has fostered cultural diversity, including among the Dayak people.<sup>1</sup> Initially, the Dayak tribe held firmly to the beliefs of their ancestors and practiced non-Islamic religions. However, with the advent of Islamic preaching, many Dayak people converted to Islam.<sup>2</sup> Despite this shift, some Dayak traditional *Temenggungs*<sup>3</sup> remain responsible for resolving customary cases for those who have embraced Islam, highlighting the complex interaction between customary law and religion in the region. For this reason, indigenous Dayak people who convert to Islam are referred to as Senganan, a term that can be interpreted as those who have joined the right group. The Dayak Senganan community consists of various Dayak sub-tribes that have converted to Islam.<sup>4</sup>

As times change, there arises a challenge in balancing the practice of customary traditions with adherence to sharia law.<sup>5</sup> This dynamic has fostered mutual understanding between the Dayak and Malay communities, the two main ethnic groups in West Kalimantan, who live cooperatively and support one another. Other ethnic groups, such as the Javanese, Bugis, and Minangkabau, further enrich the region's diversity. The customary law of the Sintang Dayak community traces its roots to a historic meeting of Dayak indigenous leaders

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<sup>1</sup> Kusnadi Wasrie, *Ensiklopedia Indonesia Provinsi Kalimantan Barat* (Yogyakarta: Pustaka Referensi, 2019).

<sup>2</sup> Mark E. Cammack and R. Michael Feener, "The Islamic Legal System in Indonesia," in *Islamic Law in Practice*, vol. 3, 2017, <https://doi.org/10.4324/9781315251738>.

<sup>3</sup> Kristianus, "The Role Of Traditional Dayak Keninjal And Melayu In Managing Conflict Of Natural Resources In The Pinoh Land Area Of Melawi District," *JURNAL BORNEO AKCAYA* 3, no. 1 (2016), <https://doi.org/10.51266/borneoakcaya.v3i1.58>.

<sup>4</sup> Zainuddin Mappong and Lili, "Right To Self Submission To Western Inheritance Law For The Heirs Of Islamic Religion Whom The Property Leaver Has Different Religion," *Journal of Law and Sustainable Development* 11, no. 2 (2023), <https://doi.org/10.55908/sdgs.v11i2.423>.

<sup>5</sup> Dr. Ellyne Dwi Poespasari, Afga Samudera Erlangga, and Dr. Soelistyowati, "The Existence Of Customary Inheritance Law Norm Development In Jurisprudence Supreme Court," *Journal Of Law Theory And Law Enforcement*, 2023, <https://doi.org/10.56943/jlte.v2i2.326>.

from across Kalimantan, held in Tumbang Anoi<sup>6</sup>, Central Kalimantan, in 1894. This gathering aimed to end the customary practice of Ngayau, a term referring to inter-community violence within the Dayak people, and to establish agreements on issues such as customary inheritance laws. Although the customary law of the Dayak community in Sintang Regency operates independently of the legal system of the Sintang Kingdom, the two authorities work in close cooperation. This collaboration reflects the complex relationship between Dayak customary law and the governance of the Sintang Kingdom, aiming to preserve harmony and order in the Sintang Regency.<sup>7</sup> The customary inheritance law is particularly notable for its communal approach, which embodies the values of unity and shared responsibility, forming an integral part of the national cultural identity.<sup>8</sup>

The inheritance system adopted by the Dayak-Muslim Senganan community exemplifies how customary inheritance law is applied with mutual understanding among community members. Although Dayak-Muslim Senganan customary law operates independently from the legal framework of the Kingdom of Sintang<sup>9</sup>, it shares similarities with the mechanisms used by the kingdom in distributing inheritance. This means that some Dayak customary rituals in Sintang Regency may differ from Islamic law, but the customary inheritance system focuses on equitable distribution.<sup>10</sup> In this system, inheritance is divided equally among all heirs, except that children who live with their parents may receive a larger share than their siblings. The parents can determine the allocation of inheritance during their lifetime; if they did not have the opportunity to make this division, the child designated as ngukuh lawing, the one who inherits the responsibility for the family home, takes charge of distributing the inheritance among the siblings, under the witness of a customary law official.

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<sup>6</sup> Syaikh et al., "The Maqashid Sharia Construction On Inheritance In Dayak Ngaju Customs Within The Tumbang Anoi Agreement," *El-Mashlahah* 13, no. 2 (2023), <https://doi.org/10.23971/el-mashlahah.v13i2.7375>.

<sup>7</sup> M Y Ahmad, "Practice of Muafakat and Application of Takharuj in Inheritance Distribution According to Muslim Inheritance Law Perspective," *Islamiyyat*, 2017.

<sup>8</sup> Mark Cammack, "Islamic Inheritance Law in Indonesia: The Influence of Hazairin's Theory of Bilateral Inheritance," *Studia Islamika* 10, no. 1 (2003), <https://doi.org/10.15408/sdi.v10i1.639>.

<sup>9</sup> Murdan, "Harmonisasi Hukum Adat, Agama, Dan Negara Dalam Budaya Perkawinan Masyarakat Islam Indonesia Belakangan," *Asy-Syir'ah* 50, no. 2 (2016).

<sup>10</sup> Rachmat Trijono, "Which Is The Fairest Between Civil Inheritance Law, Customary Inheritance Law or Islamic Inheritance Law?," *Himmah: Jurnal Kajian Islam Kontemporer* 3, no. 1 (2021), <https://doi.org/10.47313/jkik.v3i1.1096>.

This system reflects the communal principles and familial values central to the Dayak inheritance tradition.<sup>11</sup>

The practice of inheritance law within the Dayak-Muslim Senganan community in Sintang illustrates a distinctive fusion of Islamic law and local customs. While the community respects Islamic sharia, which prescribes inheritance distribution according to the Qur'an, Dayak traditions also significantly influence the process.<sup>12</sup> In practice, the division of inheritance may not strictly follow standard Islamic guidelines; instead, it is often adapted to consider the needs and contributions of each heir. Decisions about inheritance are usually reached through family discussions prioritizing fairness and familial harmony.<sup>13</sup> This approach reflects a balance between religious principles and customary practices, ensuring the well-being of all family members.

Several previous studies on the interaction between customary law, religious law, and state law reveal a tendency in Indigenous communities to prioritize cultural practices over Islamic or state law in inheritance, often leading to challenges in property governance.<sup>14</sup> Additionally, the dominance of Islamic legal principles over state law in divorce cases within some Muslim communities has shown adverse effects on the rights of children and ex-wives.<sup>15</sup> In contrast, studies on the Sasak community indicate a different approach, prioritizing customary law with Islamic law to balance justice.<sup>16</sup> In Gorontalo, inheritance division is done through family deliberations, where heirs receive an equal share.<sup>17</sup> Meanwhile, inheritance practices in Aceh give precedence to replacement heirs, shared assets, heirs of different

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<sup>11</sup> Mark Cammack, "Inching toward Equality: Recent Developments in Indonesian Inheritance Law," *Indonesian Law and Administration Review* 5, no. 1 (1999).

<sup>12</sup> Harnides, Syahrizal Abbas, and Khairuddin, "Gender Justice in Inheritance Distribution Practices in South Aceh, Indonesia," *Samarah* 7, no. 2 (2023), <https://doi.org/10.22373/sjhk.v7i2.16688>.

<sup>13</sup> Dian Mustika and Wenny Dastina, "Religious, Economic, and Political Values Shifting in Inheritance System of Suku Anak Dalam," *Abkam: Jurnal Ilmu Syariah* 20, no. 1 (2020), <https://doi.org/10.15408/ajis.v20i1.13568>.

<sup>14</sup> Devi Anggraini, *The Impact of Religious and Customary Laws and Practices on Women's Inheritance Rights in Indonesia* (Bogor: Sajogyo Institute, 2015).

<sup>15</sup> Abd Karim Faiz and Ahmad Izzuddin, "Between State Law and Islamic Law : The Practice of Divorce Outside the Situbondo Religious Courts , Indonesia Antara Hukum Negara Dan Hukum Islam : Praktik Perceraian Di Luar Pengadilan Agama Situbondo , Indonesia" 3, no. 2 (2022): 176–92, <https://doi.org/10.24260/jil.v3i2.848>.

<sup>16</sup> Zainal Arifin Haji Munir, "Wealth Distribution among Sasak Communities Through Inheritance: A Quest for Justice.," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 3 (2023): 1627-1642.

<sup>17</sup> Hamid Pongoliu, "Pembagian Harta Waris Dalam Tradisi Masyarakat Muslim Di Gorontalo," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 2 (2019), <https://doi.org/10.24090/mnh.v13i2.3166>.

religions, and the mandatory will for children.<sup>18</sup> In Banjarmasin, among Muslim descendants of Chinese heritage, inheritance distribution incorporates three main elements: discussions based on customary practices, withholding the division of inheritance, and distribution according to Islamic inheritance law.<sup>19</sup> In the Saruaso and Sawah Tengah villages, inheritance practices align with Islamic law, following the faraid (inheritance) principles without conflict. Among the Dayak Ngaju community<sup>20</sup>, pluralism in customary inheritance law is evident, with coexisting and sometimes conflicting norms from various legal systems.<sup>21</sup> This pluralism provides a framework that acknowledges and accommodates multiple legal traditions within the community.<sup>22</sup>

On the other hand, the harmonization of customary law and Islamic law in the gama tradition in North Sulawesi<sup>23</sup>, as well as the integration of these two systems in the pamogi tradition within the Bondowoso Muslim community<sup>24</sup>, demonstrate how local wisdom can be woven into a broader legal framework to foster equality and justice in society. Despite the interaction among these three legal systems, informal actors are crucial in mediating between customary law and state law.<sup>25</sup> Legal conflicts may arise when balancing Islamic law, which aligns with religious practices, against state law<sup>26</sup>, which is universally applied to all citizens, as discussed in this article.

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<sup>18</sup> Ilyas Ilyas et al., “The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives,” *Samarab* 7, no. 2 (2023): 897–919, <https://doi.org/10.22373/sjhk.v7i2.15650>.

<sup>19</sup> Gusti Muzainah and Firqah Annajiyah Mansyuroh, “Integration of Islamic Law and Banjarese Customary Law of Inheritance System Tionghoa Muslim Community in Banjarmasin, South Kalimantan,” *Samarab: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (2022).

<sup>20</sup> Rajab, Elizamiharti, and Muslim, “Islamic Inheritance Law In Saruaso And Sawah Tengah Villages Based On Islamic Principles,” *Jurnal Ilmiah Islam Futura* 22, no. 2 (2022), <https://doi.org/10.22373/jiif.v22i2.12130>.

<sup>21</sup> Syaikhul Syaikhul et al., “Legal Harmonization in the Distribution of Inheritance in the Dayak Ngaju Community in Central Kalimantan, Indonesia,” *Samarab* 7, no. 1 (2023), <https://doi.org/10.22373/sjhk.v7i1.12410>.

<sup>22</sup> Adelina Nasution, “Pluralisme Hukum Waris Di Indonesia,” *Al-Qadha* 5, no. 1 (2019), <https://doi.org/10.32505/qadha.v5i1.957>.

<sup>23</sup> Rosdalina Bukido et al., “Harmonization of Customary and Islamic Law in the Gama Tradition of the Muslim Mongondow Community of North Sulawesi,” *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 2 (2022): 239–54, <https://doi.org/10.18326/ijtihad.v22i2.239-254>.

<sup>24</sup> Ali Akhbar Abaib Mas Rabbani Lubis and Muhammad Abdul Khaliq Suhri, “Relasi Hukum Islam Dan Adat Dalam Tradisi Pamogih Pada Perkawinan Masyarakat Muslim Bondowoso,” *Volksgeist: Jurnal Ilmu Hukum Dan Konstitusi* 3, no. 2 (2020): 45–63, <https://doi.org/10.24090/volksgeist.v3i2.4014>.

<sup>25</sup> Marc Amstutz, “In-Between Worlds: Marleasing and the Emergence of Interlegality in Legal Reasoning,” *European Law Journal* 11, no. 6 (2005), <https://doi.org/10.1111/j.1468-0386.2005.00286.x>.

<sup>26</sup> Rr Dewi Anggraeni, “Islamic Law and Customary Law in Contemporary Legal Pluralism in Indonesia: Tension and Constraints,” *Abkam: Jurnal Ilmu Syariah* 23, no. 1 (2023), <https://doi.org/10.15408/ajis.v23i1.32549>.

This article examines the Dayak-Muslim Senganan customary inheritance law and the role of informal actors within this process. The author contends that the relationship between customary law, Islamic law, and state law is not marked by conflict but complementarity and harmonious interaction.<sup>27</sup> These legal systems do not oppose each other; instead, they coexist and enhance one another, allowing for a seamless integration into daily legal practice. This perspective highlights how customary and state law can complement, adapt, and harmonize to create a cohesive legal framework. However, researchers have noted that efforts to harmonize customary and Islamic law are sometimes met with tensions, especially when customary rules and Islamic law do not fully align.<sup>28</sup> In some instances, customary law takes precedence, particularly in communities with strong local traditions, while in other instances, Islamic law is prioritized.<sup>29</sup> These variations reflect how communities interpret and apply legal principles based on their unique social contexts and values. This perspective underscores that the interaction between customary and state law is dynamic and essential for shaping legal governance that respects and aligns with local community values.

## B. Method

This article presents fieldwork research conducted using a socio-legal approach. The study was conducted over five months (March to August 2022) in Sintang Sub-district, Sintang Regency, West Kalimantan, Indonesia. Data collection involved two primary methods: in-depth interviews and documentation analysis. The authors interviewed three key informants: a *temenggung* (Dayak traditional leader), the Head of the Sintang Sultanate Household, and the Head of the Sintang Sultanate Putaka Museum. Additionally, the authors reviewed the 1948 Law of the Kingdom of Sintang, obtained from Dayak traditional leaders, and Indonesian civil law articles 830–1130 (KUHPerdata) relevant to the study's focus. The data collected were analyzed using André J. Hoekema's theory of interlegality.<sup>30</sup> This analytical approach allowed the researchers to explore how customary law, Islamic law, and state law provide functional

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<sup>27</sup> Yayan Sopyan et al., "Degradation of Customary Inheritance Law in The Sai Batin Lampung Tribe," *Al-'Adalah* 17, no. 2 (2020), <https://doi.org/10.24042/adalah.v17i2.7137>.

<sup>28</sup> Dinda Keumala, "The Dialectic of Notary Inheritance Deed Arrangement," *Yuridika* 38, no. 1 (2023), <https://doi.org/10.20473/ydk.v38i1.37787>.

<sup>29</sup> Afidah Wahyuni and Harisah, "Humanism in Inheritance Distribution in Sampang Madurese Culture," *Abkam: Jurnal Ilmu Syariah* 19, no. 2 (2019), <https://doi.org/10.15408/ajis.v19i2.13899>.

<sup>30</sup> André J. Hoekema, "European Legal Encounters between Minority and Majority Cultures: Cases of Interlegality," *Journal of Legal Pluralism and Unofficial Law* 37, no. 51 (2005), <https://doi.org/10.1080/07329113.2005.10756585>.

space for one another in inheritance practices within Indonesia, particularly among the Dayak-Muslim Senganan community.<sup>31</sup> The findings suggest that these legal systems do not conflict; rather, they interact mutually, allowing each system to penetrate and respect the other's principles. This dynamic aims to promote legal practices focused on the community's well-being.

## C. Result

Customary law within the Indonesian legal system embodies an eclectic approach to inheritance law, one that could be developed further as part of a national inheritance law framework, allowing for greater harmonization and integration. As a part of the Dayak-Muslim Senganan community's traditions, customary law serves as an unwritten legal subsystem rooted in the legal consciousness of the Dayak people. It influences daily activities and influences personal, family, group, and community life. The Dayak-Muslim customary inheritance law system does not operate in isolation; changes to this system could disrupt the long-standing social cohesion within the community. This approach reflects legal pluralism, acknowledging and accommodating various legal traditions. The harmonization of custom, state, and Islamic law in the inheritance practices of the Dayak-Muslim Senganan community demonstrates that these three elements can coexist constructively, rather than in conflict, to create an effective inheritance system suited to the community's unique social and cultural context. Understanding how customary law, religion, and state law can interact and adapt to one another is crucial for establishing a legal system that is locally relevant while also aligned with national standards and religious teachings.

## D. Analysis and Discussion

### 1. Inheritance In Indonesia: Positive Law and Fiqh Perspectives

A considerable body of literature explores the interactions among customary law, religious law, and state law from a conflict-oriented perspective.<sup>32</sup> In the context of inheritance traditions and practices in Indonesia, negotiations and contestations among these three legal systems often fall short of providing a definitive resolution. Such issues tend to be resolved

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<sup>31</sup> H A Hamoudi and M Cammack, *Islamic Law in Modern Courts (Introduction)*, *Islamic Law in Modern Courts*, Aspen ..., 2018, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3184864](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3184864).

<sup>32</sup> Ratno Lukito, *Islamic Law and Adat Encounter: The Experience of Indonesia* (Canada: McGill University, 1997).

only through institutional authority and respect for personal autonomy.<sup>33</sup> In Malaysia<sup>34</sup>, for instance, conflicts arise between customary law and Islamic law in inheritance matters, while in Canada, Australia, and South Africa, tensions emerge between religious and state laws.<sup>35</sup> Despite these tensions, the dynamic interactions among customary, religious, and state law as distinct yet overlapping traditions can often be managed through negotiation, shaped by local conditions<sup>36</sup> and the extent to which customary and religious laws align with the state's legal ideology. This adaptable approach highlights the potential for these systems to coexist, depending on context and state accommodation of diverse legal traditions.

The issue of inheritance in Indonesia is unique and diverse, shaped by the influence of custom, religion, and state law.<sup>37</sup> The Civil Law system in Indonesia, including those provisions governing inheritance, remains pluralistic because there has been no unification, particularly in the inheritance system, which is part of the civil law. As a result, the implementation of inheritance law continues to adhere to three distinct systems: Customary Inheritance Law, Islamic Inheritance Law, and Western Civil Inheritance Law (*Burgelijk Wetboek*).

Book II, Article 171, letter (a) of the Compilation of Islamic Law defines inheritance law as the body of law that regulates the transfer of ownership rights of the deceased's estate (*tirkah*), determining who is entitled to inherit and specifying the shares each heir is entitled to.<sup>38</sup> The basis of Islamic inheritance law is outlined in the Qur'an, specifically in Surah An-Nisaa, verse 7, which states: "For men, there is a right to a share of the inheritance of their fathers and relatives, and for women, there is also a right to a share of the inheritance of their fathers and relatives, whether it be small or large, according to the parts that have been determined."<sup>39</sup>

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<sup>33</sup> Mohamad Abdun Nasir, "Religion, Law, and Identity: Contending Authorities on Interfaith Marriage in Lombok, Indonesia," *Islam and Christian-Muslim Relations* 31, no. 2 (2020), <https://doi.org/10.1080/09596410.2020.1773618>.

<sup>34</sup> M.B. Hooker, "Adat and Islam in Malaya," *Bijdragen Tot de Taal-, Land- En Volkenkunde / Journal of the Humanities and Social Sciences of Southeast Asia* 130, no. 1 (2020), <https://doi.org/10.1163/22134379-90002707>.

<sup>35</sup> eds. Peter Radan, Denise Meyerson, and Rosalind F. Atherton, *Law and Religion* (London: Routledge, 2004).

<sup>36</sup> Bernard Adeney-Risakotta, "Traditional, Islamic and National Law in the Experience of Indonesian Muslim Women†," *Islam and Christian-Muslim Relations* 27, no. 3 (2016), <https://doi.org/10.1080/09596410.2016.1186422>.

<sup>37</sup> Ratno Lukito, *Legal Pluralism in Indonesia* (London: Routledge, 2012).

<sup>38</sup> "Kompilasi Hukum Islam" (n.d.).

<sup>39</sup> Departemen Agama RI, *Al-Qur'an Dan Terjemahannya* (Jakarta: Yayasan Penyelenggaran Penerjemah Al-Qur'an, 2019).



The division of inheritance based on Islamic law is called Faraidh. This system is outlined in the Qur'an, specifically in Surah An-Nisaa, verse 11, which states: "Allah has prescribed for you the division of inheritance for your children. A son's share is equal to the share of two daughters; if the children are all daughters, more than two, they will receive two-thirds of the estate; if only one daughter remains, she will receive half of the estate. Two parents will receive a sixth of the estate if the deceased has children. If the deceased has no children and is inherited only by his mother (father's mother), she will receive a third of the estate; if the deceased has several brothers, then his mother will receive a sixth. (These divisions are made after fulfilling any will the deceased made or after paying debts). As for your parents and children, you do not know which of them is more likely to benefit you, but this is the decree of Allah. Verily, Allah is All-Knowing, All-Wise."<sup>40</sup>

In Islam, law is considered an integral part of religious teachings, with legal norms derived from religious principles. Muslims believe that Islamic law is based on divine revelation, which is why it is referred to as \*Sharia\*, meaning the path laid out by God for humanity. Islamic Sharia preserves and safeguards moral values, and as such, it contains numerous provisions to protect and uphold these values.<sup>41</sup>

The word "Hukm" in Arabic refers to norms or rules, which are measures, benchmarks, standards, or guidelines used to evaluate the behavior or actions of people and objects. The relationship between law (in Indonesian) and "Hukm" (in Arabic, meaning norms or rules) is very close, as every regulation, regardless of its form or source, contains norms or rules at its core.<sup>42</sup>

The position of Islamic law in the 1945 Constitution can be specifically understood through Article 29, paragraph (1), of the 1945 Constitution. This article states that the state is based on believing in God Almighty. The fundamental principles in this article can be interpreted as follows: First, in the Republic of Indonesia, no law should contradict the religious principles followed by the people. Second, the state must implement the sharia of all religions practiced in Indonesia if such sharia requires the assistance of state power. This means that the state must regulate and enforce laws derived from religious teachings to benefit

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<sup>40</sup> Muhammad Husni, "Mencegah Potensi Konflik Dalam Pelaksanaan Wasiat Pembagian Harta, Mungkinkah?," *De Jure: Jurnal Hukum Dan Syar'iah* 11, no. 2 (2019), <https://doi.org/10.18860/j-fsh.v11i2.6728>.

<sup>41</sup> Poespasi, Erlangga, and Soelistyowati, "The Existence Of Customary Inheritance Law Norm Development In Jurisprudence Supreme Court."

<sup>42</sup> Fahmi Fatwa Rosyadi Satria Hamdani et al., "Traditional Law vs. Islamic Law; An Analysis of Muslim Community Awareness in Inheritance Issues," *Al-Ahkam* 32, no. 1 (2022), <https://doi.org/10.21580/ahkam.2022.32.1.11000>.

the Indonesian nation. Third, sharia, which does not require state assistance, can be carried out by the followers of the religion concerned. This implies that laws derived from religion can be practiced by adherents, according to their respective beliefs, particularly in matters of worship.<sup>43</sup> Every citizen is entitled to rights that must be recognized, respected, protected, facilitated, and fulfilled by the state.<sup>44</sup>

Substantively, the government has formalized the constitutionalization of state law, which provides space for the rule of law, particularly in implementing Islamic law, carried out following the applicable laws and regulations. As a result, Islamic law is codified in the Compilation of Islamic Law (KHI), which is considered a significant achievement for Indonesian Muslims and reflects a high level of integration between the vision of Islam, Indonesianness, and modernity.<sup>45</sup> The formulators of the Compilation of Islamic Law also took into account global developments and the structure of written Western law and Customary Law, which share similarities with Islamic law.<sup>46</sup> The Compilation of Islamic Law is a distinctive representation of Islamic law in Indonesia, featuring Indonesian nuances.<sup>47</sup> With the KHI, the pluralism of Religious Court decisions in Indonesia has been reduced, as all Religious Court judges now refer to the exact text. Furthermore, fiqh, which was previously interpretative, has now been transformed into a positive law that binds all Muslims in Indonesia. To this day, the KHI continues to serve as a guide for Religious Court judges in addressing issues related to Islamic law.<sup>48</sup>

A person can become an heir of the testator if they meet the requirements to inherit, which include 1) a blood relationship and 2) a marital bond. Blood relationships can include fathers and children, mothers and children, or vice versa. The marital relationship refers to the mutual inheritance between husband and wife. In addition to the reasons for receiving inheritance, some factors can prevent a person from inheriting, including 1) different faith, 2)

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<sup>43</sup> Abdul Halim, "Politik Hukum Islam Di Indonesia: Kajian Posisi Hukum Islam Dalam Politik Hukum Pemerintahan Orde Baru Dan Era Reformasi," *Badan Litbang Dan Diklat Departemen Agama RI*, 2008.

<sup>44</sup> Rokilah, "Implikasi Kewarganegaraan Ganda Bagi Warganegara Indonesia," *Jurnal Ilmu Hukum "Ajudikasi"* 1, no. 2 (2017): 55.

<sup>45</sup> Murdan, "Pluralisme Hukum (Adat Dan Islam) Di Indonesia, Mahkamah," *Mahkamah: Jurnal Kajian Hukum Islam* 1, no. 1 (2016): 20–51.

<sup>46</sup> Slamet, "Nilai Multikulturalisme: Sebuah Implikasi & Tantangan Negara-Bangsa Indonesia Ke Depan," *Seminar Nasional*, 2019.

<sup>47</sup> Zayyin Alfijihad, "Eksistensi Hukum Adat Dan Hukum Islam Di Indonesia Dalam Perspektif Socio-Legal Studies," *Ussratuna: Jurnal Hukum Keluarga Islam* 1, no. 2 (2018): 21.

<sup>48</sup> M.Fadhlan Is, "Kehujahan Hukum Negara Sebagai Sumber Hukum Islam (Studi Kasus Legalitas Kompilasi Hukum Islam Di Indonesia)," *El-Ahli: Jurnal Hukum Keluarga Islam* 2, no. 1 (2021), <https://doi.org/10.56874/el-ahli.v2i1.476>.

murder, and 3) slandering the heir. Based on these conditions, a Muslim heir can only inherit property if their heirs are also Muslim, and vice versa. A person's status as a Muslim heir can be verified through an identity card, confession, religious practice, or testimony. The term "Muslim" in this context indicates that only those who are Muslim can inherit from a Muslim heir.

This highlights the importance of religion in the process of inheritance distribution. Regarding the type of murder committed, scholars have differing opinions.<sup>49</sup> The Hanafi and Shafi'i schools hold that all types of murder prevent a person from receiving inheritance. The Maliki school, however, maintains that only intentional murder prevents inheritance. The Hanbali school asserts that any murder punishable by *qisas*, *diyat*, or expiation alone will prevent inheritance. On the other hand, the obstruction of inheritance due to slandering the heir is mentioned only in Article 173, Letter B of the Compilation of Islamic Law (KHI). In classical fiqh books, slander is not listed as a factor that obstructs inheritance.<sup>50</sup>

The specifications of the Islamic inheritance law system, according to the Quran, include the criteria that heirs must be individuals who have inheritance rights based on kinship (*nasab*) or marital relations (*nikah*) with the testator, are Muslims, and face no legal obstacles preventing them from inheriting.<sup>51</sup> In addition, Islamic teachings regulate certain rights that must be fulfilled before the distribution of inheritance takes place. This provision offers a sense of peace, even for the living, as it underscores that the property left behind is not merely a disputed object to be immediately divided but something that must be handled with complete justice. The inheritance of property encompasses all assets related to wealth and rights that must be fulfilled before the inheritance is distributed. The fuqaha (Islamic jurists) have differing opinions on the number of rights that must be fulfilled before inheritance distribution. Some state that there are four essential rights: 1) the cost of caring for the deceased, 2) repayment of debts, 3) execution of the will, and 4) distribution of the inheritance.

A person's estate is distributed to their heirs after all the previously mentioned rights have been fulfilled.<sup>52</sup> These rights must be settled before the inheritance is distributed to the

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<sup>49</sup> Sabri Deki Suwarna, "Fiqh Mawaris (Syariat Kewarisan) Di Indonesia," *Jurnal Syariat Hukum Islam* 1, no. 2 (2018).

<sup>50</sup> Anshary, *Hukum Kewarisan Islam Dalam Teori Dan Praktik*, Yogyakarta (Yogyakarta: Pustaka Pelajar, 2017).

<sup>51</sup> Rosnidar Sembiring, "Hukum Keluarga (Harta-Harta Benda Dalam Perkawinan)," *Jakarta: PT.RajaGrafindo Persada*, no. Pasal 1 (2016).

<sup>52</sup> Asrizal, "Peletakan Dasar-Dasar Hukum Kewarisan Islam (Tinjauan Historis Atas Hukum Waris Pra Dan Awal Islam)," *Al-Abwal: Jurnal Hukum Keluarga Islam* 9, no. 1 (2016).

heirs. These rights are paid to the heirs using the inheritance, which consists of the testator's original property and a share of the joint property. The original property can include 1) assets obtained by the testator before marriage and 2) assets obtained by the heir in grants and inheritance, whether before or after marriage. Joint property consists of 1) property acquired individually during the marriage and 2) property acquired together during the marriage, regardless of the name under which the property is registered.<sup>53</sup>

Therefore, inheritance law in Indonesia has developed its own identity, both in terms of fiqh and positive law. Jurisprudence in Indonesia has been adapted to the characteristics of Indonesian Islamic society, as fiqh itself is flexible and dynamic. This adjustment led to creating a fiqh with Indonesian characteristics, codified in the Compilation of Indonesian Islamic Law.

## **2. The Division Of Customary Inheritance Of Dayak-Muslim Senganan, Sintang**

The debate on Muslim inheritance in Indonesia, particularly among the Dayak-Muslim Senganan community, is a significant challenge. This is evident from historical records in Negeri Sintang, where the Dayak tribe is referred to as the Darat tribe or land people, and the Malay tribe as the Sea tribe. The Dayaks inhabit the land, while the Malays live along the riverbanks. The Dutch colonial government introduced the terms "Malay" and "Dayak" to categorize the population in the Kingdom of Sintang. The Dutch used the term "Dayak" to refer to the people of the Darat tribe, which includes various sub-tribes.

On the other hand, the term "Malay" was used to identify the Sea tribe people, a group formed by the intermarriage of indigenous people and immigrant tribes.<sup>54</sup> The Malay designation also became associated with Islam, as Islam was the predominant religion of the Sea tribe people. Meanwhile, Dayak people who converted to Islam were referred to as Senganan, which can be interpreted as those who have joined the "correct" group. The Dayak Senganan consists of various Dayak sub-tribes that have embraced Islam. Therefore, the term Senganan does not erase the original identity of the sub-tribe to which the Dayak individuals belong. However, some customs within the Dayak sub-tribe communities that have adopted Islam are adjusted to align with Islamic teachings.

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<sup>53</sup> Anshary, *Hukum Kewarisan Islam Dalam Teori Dan Praktik*, Yogyakarta.

<sup>54</sup> Gusti Muhammad Fadli, Interview, at Sintang 17 Februari 2024.

Customary law plays a dominant role in resolving the issues faced by the Dayak indigenous people in West Kalimantan, particularly in Sintang Regency. The Dayak customary law in Sintang has its roots in a meeting of Dayak indigenous peoples from across Kalimantan, held in Tumbang Anoi, Central Kalimantan, in 1894. The purpose of the meeting was to put an end to the practice of \*Ngayau\* (inter-tribal killings) and to establish various customary agreements, including those related to inheritance law. Dayak customary law is implemented by the customary head, known as the *Temenggung Adat Dayak*. Therefore, decisions regarding customary matters are entrusted to the *Temenggung Adat Dayak*.

However, certain practices, mainly traditional rituals that contradict Islamic law, are still absent in the customary inheritance process. In the specific case of Dayak-Muslim Senganan Sintang customary inheritance law, its implementation follows the provisions outlined in Articles 42 to 44 of the Adat Istiadat Suku Dayak book of Sintang Regency, which explains the meaning of customary inheritance as follows:

"Before the parents die, the property owned is handed over to the child who is *ngukub lawang* (the child who lives with the parents). The *ngukub lawang* child has the right to distribute the inheritance to his siblings and is witnessed by adat officials."<sup>55</sup>

Article 43, which contains the provisions of customary inheritance, states that:

"Another child cannot seize objects or goods bequeathed to a child because this is the command of the ancestors/parents; a lot or a little depends on the *pengukub lawang* who determines."<sup>56</sup>

Certain customary practices that conflict with Islamic law are absent in the inheritance practices of the Dayak-Muslim community of Senganan Sintang. This reflects the significant influence of Islamic law in regulating inheritance within this community, leading to the exclusion of customary elements that contradict Islamic principles. Implementing customary inheritance law in this community follows the provisions outlined in Articles 42 to 44 of the Adat Istiadat Suku Dayak book of Sintang Regency. These articles stipulate that a parent's property is entrusted to the child who lived with them before their passing. This child is granted the right to distribute the inheritance among their siblings under the supervision of adat officials. The articles further emphasize that other children cannot claim the inherited property, as the distribution is based on the wishes of the ancestors or parents, with the inheritance amount determined by the child who resided with the parents. This practice highlights the harmonious integration of customary law and Islamic law, where customary

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<sup>55</sup> "Adat Istiadat Dan Hukum Adat Dayak Kabupaten Sintang Tentang Waris Adat, Pasal 42." (n.d.).

<sup>56</sup> "Adat Istiadat Dan Hukum Adat Dayak Kabupaten Sintang Tentang Waris Adat, Pasal 43." (n.d.).

practices are preserved while adapted to align with Islamic values, ensuring harmony within the Dayak-Muslim community of Senganan Sintang.

Then there are customary sanctions if this is violated, which is regulated in Article 44, which contains violations of customary inheritance, which states that:

"Whoever violates the command of the heirs of these objects is subject to 40 Rial customs plus other customs according to other forms of misconduct determined by customary officials".<sup>57</sup>

According to customary rules, a person may be punished if they receive an inheritance that does not comply with the applicable customary provisions. For example, a child who receives a larger share of the inheritance without undergoing the *ngukuh lawing* process may face penalties. This differs from inheritance law under positive law and Islamic law, which do not impose fines as punishment for violators. According to the *Temenggung Adat Dayak*, members of the customary community who violate these rules also face social sanctions, which are rarely applied in cases involving Islamic or statutory inheritance laws.<sup>58</sup>

Further explanation regarding the application of customary inheritance law in the Dayak Indigenous community of Sintang Regency is as follows:

a). Heirs

Heirs under Dayak customary law consist of parents and descendants. If someone dies and leaves behind parents and children, the parents are entitled to a share of the inheritance.<sup>59</sup> If the heir's parents pass away after receiving their share, the inheritance obtained by the parents is passed on to their grandchildren (the children of the heir) who were most devoted to caring for them. The parents select one child to live with to determine the heirs who become *ngukuh lawing* (children who live with the parents). After careful consideration, the parents take turns living with each child and decide which child will care for them. The child who provides this care receives a larger share of the inheritance than the other children and is responsible for determining the shares of the siblings, with the decision witnessed by the customary administrator. This process ensures parents choose the child best suited to care for

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<sup>57</sup> "Adat Istiadat Dan Hukum Adat Dayak Kabupaten Sintang Tentang Waris Adat, Pasal 44." (n.d).

<sup>58</sup> Mustika and Dastina, "Religious, Economic, and Political Values Shifting in Inheritance System of Suku Anak Dalam."

<sup>59</sup> Muhamad Faisal Tambi, "Studi Komparasi Pembagian Warisan Menurut Hukum Islam Dan Hukum Adat," *Lex Privatum* 6, no. 9 (2019).

and live with them. Therefore, children cannot compete to care for their parents, as the parents decide who they will live with.<sup>60</sup>

The child appointed as *ngukuh lawang* can distribute the inheritance at their discretion. The distribution process is carried out through family deliberations, guided by the applicable customary inheritance principles. To ensure the distribution's validity from the Islamic law perspective, the procedure for dividing the inheritance can be examined using the normative approach of ushul fiqh, such as through 'urf or masalah mursalah. When using the argument of 'urf, it can be assessed whether the inheritance law falls under 'urf shahih (valid custom) or 'urf fasid (invalid custom). Alternatively, using the argument of masalah mursalah, the inheritance law can be evaluated to determine if it aligns with the principles of benefit. This demonstrates the integration of Islamic and customary law in inheritance cases<sup>61</sup> within the Dayak Muslim community of Senganan Sintang.

Like Malay inheritance law, Dayak inheritance law also grants a share of the inheritance to the testator's siblings if the testator has no descendants. However, Dayak law does not use a method like *\*anak ngukuh lawang\** to determine which siblings are entitled to inherit. Instead, the determination is made through deliberation with the Adat management. Similarly, if the testator has adopted children, the share of the adopted child is decided through customary deliberations.<sup>62</sup>

This demonstrates that the flexibility of Islamic inheritance law in interacting with customary inheritance law is highly significant. Although Islamic inheritance law has a fixed framework, this does not mean it rejects flexibility when dealing with local customs and practices. However, this flexibility does not negate Islamic inheritance law's *ijbari* (compulsory) principle. The flexibility is possible because Islamic inheritance law belongs to the voluntary law category, allowing for tolerance and deliberation among the interested parties. If this tolerance is not exercised, then the inheritance is divided according to the provisions of the Qur'an and Hadith, and the distribution must strictly adhere to the guidelines set by Allah. In this case, inheritance law becomes compulsory, meaning it is absolutely binding.<sup>63</sup>

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<sup>60</sup> Truman. Interview. at Sintang, 17th April 2022.

<sup>61</sup> Syabbul Bachri, "Perbandingan Penerapan Konsep Kalalah Dalam Pemikiran Hukum Waris Islam," *AT-TURAS: Jurnal Studi Keislaman* 9, no. 1 (2022), <https://doi.org/10.33650/at-turas.v9i1.3650>.

<sup>62</sup> Truman. Interview. at Sintang, 17th April 2022.

<sup>63</sup> Zikri Darussamin, "Integrasi Kewarisan Adat Melayu-Siak Dengan Kewarisan Islam," *Al-Fikra: Jurnal Ilmiah Keislaman* 11, no. 2 (2017), <https://doi.org/10.24014/af.v11i2.3857>.

From the perspective of the KHI (Compilation of Islamic Law), the share for adopted children is provided in the form of a mandatory will. This is outlined in Article 209 of the KHI, which states that the mandatory will apply to adopted children, adoptive parents, and other heirs who are excluded from receiving inheritance for shara's reasons. The share allocated through the mandatory will cannot exceed one-third of the inheritance. In contrast, customary rules have not standardized the share for adopted children in the Dayak Muslim Senganan Sintang customary inheritance system. Instead, this share is determined at the discretion of the *Temenggung* Adat Dayak, who serves as the adjudicator in family deliberations.<sup>64</sup>

The Dayak customary inheritance law review using ushul fiqh principles such as 'urf or masalah mursalah demonstrates an integration between customary law and Islamic law. However, to ensure the validity of the Dayak customary inheritance practice, it must meet the conditions required by Islamic inheritance law. Each heir must be aware of their respective shares according to the provisions in the Qur'an. The same principle is also outlined in the KHI as the positive law in Indonesia. Article 183 of the KHI states that heirs may distribute the inheritance equally after determining their respective shares.<sup>65</sup>

b). Procedure for the division of inheritance

The distribution of inheritance according to the customary inheritance law of the Dayak-Muslim Senganan tribe in Sintang Regency is typically carried out directly by the parents while they are still alive or by the children who are *ngukuh lawang* (those who live with the parents). In Islamic inheritance, this practice would be referred to as a grant (hibah) in its distribution.<sup>66</sup> The inheritance is distributed equally among the heirs, except for the child who lives with the parents, who will receive a larger share than the other siblings. The parents can determine this division during their lifetime, or if the parents did not have time to distribute the property, the *ngukuh lawang* child is responsible for distributing the inheritance to the siblings, with the testimony of the customary administrator.

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<sup>64</sup> Salmudin - Salmudin, Firman Muntaqo, and KN. Sopyan Hasan, "Tunggu Tubang as a Method for Peaceful Inheritance Distribution of Semende Indigenous Peoples/Tunggu Tubang Sebagai Metode Pembagian Harta Waris Secara Damai Masyarakat Adat Semende," *De Jure: Jurnal Hukum Dan Syar'iah* 13, no. 1 (2021), <https://doi.org/10.18860/j-fsh.v13i1.11028>.

<sup>65</sup> Jomana Mohamed Sabri Awiety and Abdul Kadir Riyadi, "History Of Joint Marital Property In Indonesia And Its Legalization," *Malaysian Journal of Syariah and Law* 8, no. 2 (2020), <https://doi.org/10.33102/mjssl.vol8no2.256>.

<sup>66</sup> Muhammad asykur Muchtar, "Analisis Terhadap Sistem Pembagian Harta Warisan," *JUSTISI* 4, no. 2 (2019), <https://doi.org/10.33506/js.v4i2.532>.



Heirlooms such as pots, plates, lantak guns, Mandau, and others are distributed equally among the heirs if the number of heirlooms matches the number of heirs. However, children who live with their parents receive heirlooms of higher value than those given to the other heirs. If the number of heirlooms does not match the number of heirs, the heirlooms are first appraised in monetary value before being distributed among the heirs according to the agreement.

In the Dayak-Muslim community of Senganan Sintang, if the deceased has no descendants, the inheritance is passed on from the parents and the siblings. However, unlike the *kalalah* inheritance system<sup>67</sup>, which automatically distributes inheritance to siblings without considering their role in caring for the deceased, this community stipulates that only those who actively contributed to caring for the deceased during their lifetime can receive the inheritance.<sup>68</sup> This highlights that customary law in this community incorporates additional considerations, prioritizing personal contributions to the deceased in the distribution of inheritance. Therefore, determining the share of inheritance for the testator's siblings requires prior deliberation with the customary administrator. If the testator has no relatives, the inheritance is handed over to foundations, as is the case in Malay customary inheritance law.

### 3. Harmonization of Customary Inheritance of Dayak-Muslim Senganan, Sintang

In the inheritance practices of the Senganan Dayak tribe in Sintang, there is a legal interpenetration that combines customary law, Islam, and state law.<sup>69</sup> This phenomenon involves the Dayak-Muslim Senganan community, which carries out inheritance practices based on hereditary traditions, distributing inheritance according to their needs and emphasizing justice.<sup>70</sup> In this context, Dayak-Muslim customary law is crucial in handling inheritance cases, incorporating several fundamental principles. One of these is the principle of harmony and kinship<sup>71</sup>, which can be achieved through the fulfillment of deliberation and

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<sup>67</sup> Evra Willya, "Konsep Kalalah Dalam Al-Quran Dan Penafsirannya Menurut Studi Suni Dan Syiah Imamiyyah," *Abkam: Jurnal Ilmu Syariah* XIV, no. 1 (2014).

<sup>68</sup> Bachri, "Perbandingan Penerapan Konsep Kalalah Dalam Pemikiran Hukum Waris Islam."

<sup>69</sup> Mappong and Lili, "Right To Self Submission To Western Inheritance Law For The Heirs Of Islamic Religion Whom The Property Leaver Has Different Religion."

<sup>70</sup> Akhmad Haries, "Analisis Tentang Studi Komparatif Antara Hukum Kewarisan Islam Dan Hukum Kewarisan Adat," *FENOMENA* 6, no. 2 (2014), <https://doi.org/10.21093/fj.v6i2.169>.

<sup>71</sup> Ida Kurnia and Tundjung H.S, "Peningkatan Kesadaran Hukum Masyarakat Terhadap Pengaturan Hukum Waris Di Indonesia," *Jurnal Bakti Masyarakat Indonesia* 2, no. 2 (2020), <https://doi.org/10.24912/jbmi.v2i2.7262>.

consensus. Additionally, the principle of justice is central to Dayak customary inheritance law in Sintang Regency, which prioritizes these values in its practice.

The same principle applies to the distribution of inheritance under Dayak customary law in Sintang Regency. The principle of harmony is achieved by prioritizing justice. Children who live with and care for their parents receive the largest share of the inheritance and are responsible for determining the shares of their other siblings. While Islam considers filial piety an obligation for all children, Dayak customary inheritance law specifically refers to the child who spends the most time with the parents daily. However, this does not relieve the other children from their duty to show devotion and care for their parents.

Meanwhile, the integration of customary law within Islamic law reflects a dynamic, flexible, and adaptable nature, aligning with the conditions and sociological identity of the Dayak-Muslim Senganan community, which supports this fusion. This accommodation positively impacts community life, strengthening the preservation and adherence to customs, enhancing the law's role as a tool for social control, and profoundly embedding Islamic law into the culture.<sup>72</sup> Theoretically, within legal pluralism, the accommodation between customary and Islamic law facilitates harmonization as the primary goal, preventing conflicts between legal systems.<sup>73</sup> The distribution of inheritance according to the customary inheritance law of the Dayak-Muslim Senganan tribe in Sintang Regency is typically carried out directly by parents while they are still alive, especially to children who live with them. In Islamic inheritance law, this practice is known as *hibah*.<sup>74</sup> Furthermore, it positively influences people's lives by strengthening the observance of customs and enhancing the role of law as a means of social control, with Islamic law becoming deeply ingrained in society. Theoretically, in the context of legal pluralism, the accommodation between adat and Islamic law creates a space for harmonization as the primary objective, preventing conflicts between legal systems.<sup>75</sup>

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<sup>72</sup> Attahariq T.P and Azizul Hakim .C, "Hukum Adat Dalam Pembagian Waris Terhadap Masyarakat Bugis," *JURNAL HUKUM, POLITIK DAN ILMU SOSIAL* 1, no. 3 (2022), <https://doi.org/10.55606/jhps.v1i3.922>.

<sup>73</sup> Muhammad Jazil Rifqi, "The Superiority of Customary Law over Islamic Law in the Settlement of Inheritance: Reflections on Snouck Hurgronje's Reception Theory," *Millah: Journal of Religious Studies* 21, no. 1 (2021): 217–52, <https://doi.org/10.20885/millah.vol21.iss1.art8>.

<sup>74</sup> Tarmizi Tarmizi and Asni Zubair, "Toleransi Hukum Islam Terhadap Sistem Kewarisan Adat Di Indonesia," *ADHKI: JOURNAL OF ISLAMIC FAMILY LAW* 4, no. 2 (2023), <https://doi.org/10.37876/adhki.v4i2.98>.

<sup>75</sup> Ilyas et al., "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives."

This is the interaction and harmonization of custom, state, and Islam<sup>76</sup> in the practice of inheritance within the Dayak-Muslim Senganan community in Sintang, Indonesia. In this community, deeply rooted Dayak customs often intersect with Islamic teachings, which have specific rules regarding inheritance, as outlined in faraid law.<sup>77</sup> The interaction between these two systems presents challenges, particularly when Islamic rules must be adapted to long-established customary norms or when customary practices must be adjusted to better align with Islamic principles.<sup>78</sup> Additionally, the state plays a crucial role in its national legal system, acting as a mediator or enforcer to ensure that inheritance practices comply with national laws. The state can also recognize customary law within the national legal framework, allowing customary inheritance practices to continue as long as they do not conflict with national law or fundamental human rights principles. In this context, the Dayak-Muslim Senganan community has developed a unique inheritance system by combining elements of adat, Islam, and state law, creating a relevant and fair system. This case study in Sintang demonstrates how local communities navigate legal complexities in a pluralistic society while maintaining the sustainability of traditional adat in the modern era. The harmonization of adat, state law, and Islam in this inheritance practice shows that these three elements can work together to create a functional and relevant system within a specific social and cultural context.

Customary inheritance law in Indonesia has unique and specific characteristics, reflecting the values of traditional societies based on collective and communal cultures.<sup>79</sup> There are three types of customary inheritance systems: patrilineal, matrilineal, and parental. Each system has distinctive characteristics that set it apart from the others. These differences often lead to disputes and challenges, particularly concerning the roles of men and women within the contexts of patriarchy and matriarchy. Inheritance issues are typically resolved through deliberation, agreement, or legal channels.<sup>80</sup>

In the Dayak-Muslim Senganan community of Sintang, customary inheritance law,

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<sup>76</sup> Khairuddin Hasballah et al., "Patah Titi and Substitute Heirs: A Study of Legal Pluralism on the Inheritance System in Aceh Community," *Abkam: Jurnal Ilmu Syariah* 21, no. 2 (2021).

<sup>77</sup> Hamdani et al., "Traditional Law vs. Islamic Law; An Analysis of Muslim Community Awareness in Inheritance Issues."

<sup>78</sup> Abdul Mutakabbir, Hastuti, and Mikdar Rusdi, "The System of Inheritance Distribution in South Sulawesi," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, no. 1 (2023), <https://doi.org/10.18326/IJTIHAD.V23I1.57-76>.

<sup>79</sup> Sonny Judiasih and Efa Laela Fakhriah, "Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia," *PADJADJARAN Jurnal Ilmu Hukum* 5, no. 2 (2018): 315–30.

<sup>80</sup> M. Umam Al-Mabruri Nasikhul, "Keadilan Pembagian Harta Warisan Perspektif Hukum Islam Dan Burgerlijk Wetboek," *Al-Maqaabib: Jurnal Perbandingan Hukum* 5, no. 1 (2017).

Islamic law, and state law interact in distinct ways. Customary inheritance law allows for the direct distribution of inheritance by parents to the children who live with them under the supervision of customary officials and emphasizes family ties and community traditions. In contrast, Islamic inheritance law imposes strict rules that dictate the division of inheritance according to proportions specified in the Qur'an, focusing on justice and equality among heirs. State law, as outlined in the Civil Code and the Compilation of Islamic Law<sup>81</sup>, offers a legal framework that blends modern legal principles with customary and religious law elements, ensuring certainty and fairness for all citizens. The integration of these three legal systems reflects an ongoing effort to harmonize local traditions, religious teachings, and national law, though challenges in reconciling these systems persist. As a result, legal pluralism presents a positive potential for both the state and society. This legal interaction is closely connected to local wisdom in upholding legal norms that maintain harmony, with the state playing a pivotal role in legitimizing customary practices. In the case of the Dayak-Muslim Senganan community, these practices do not conflict but instead complement each other. This approach represents a transitional attitude toward the rule of law, where unwritten and written laws coexist and inform one another.

## E. Conclusion

The harmonization between custom, state, and Islam in inheritance practices within the Dayak-Muslim Senganan community demonstrates that these three elements need not be viewed as conflicting entities but can work together to create an effective inheritance system tailored to a specific social and cultural context. It also illustrates how traditional Dayak customs remain relevant and continue to be applied in a society that has embraced Islam and is governed by state law, showcasing cultural flexibility and sustainability in a modern context. The principle of harmony, aimed at achieving justice, is reflected in customary inheritance law, where children who live with and care for their parents receive a larger share. This adjustment in inheritance is a recognition of the child's contribution to the well-being of the parents. The principle of kinship is also evident in determining which children will care for the parents. Parents live alternately with their children until they feel most comfortable with one, highlighting the familial values embedded in selecting the caretaker child (*ngukuh lawang*). From

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<sup>81</sup> Mark Cammack, "Indonesia's 1989 Religious Judicature Act: Islamization of Indonesia or Indonesianization of Islam?," *Indonesia* 63 (1997), <https://doi.org/10.2307/3351514>.

the perspective of Islamic law, and following the principles of ushul fiqh, the practice of inheritance distribution within the Dayak Senganan community reflects *maslahah mursalah*, which integrates the law based on benefit rather than conflict. This inheritance model in the Dayak-Muslim community allows for the division of inheritance while prioritizing proper conduct. The recognition of customary law by the state is also reflected in Article 18B of the 1945 Constitution, while the position of Islamic law within the Constitution can expressly be understood from Article 29, paragraph (1).

## F. Conflict of Interest Statement

The authors declare that there is no conflict of interest in the publication of this article.

## G. Acknowledgment

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