

**Islamic Law And Gendered Inheritance:
An-Taradhin as Breakthrough for Women's Rights Disputes
in Java, Bali, and Sumatra**

Hendi Sugianto¹, Achmad Fawaid², Hasan Baharun³, Ayuningtias Yarun⁴

Institut Agama Islam Negeri Ternate, Indonesia¹

Universitas Pembangunan Nasional Veteran, Jawa Timur, Indonesia²

Universitas Nurul Jadid, Indonesia³

STAI Rawa Aopa Konawe Selatan, Indonesia⁴

Corresponding Author : hendisugianto@iain-ternate.ac.id

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Abstract

The Indonesian government provides legal protection for women, but they face ongoing challenges in preserving land ownership in various regions. This article aims to explore three main points: (a) women's contested land ownership and inheritance rights in Java, Bali, and Sumatra, (b) the successful breakthroughs in the application of Islamic law in addressing these contestations in other regions, and (c) the idea of *an-taradhin* as a practical solution to these disputes. This study employs a qualitative empirical legal research approach, combining documentary analysis of statutory frameworks and Islamic legal sources with field interviews with several stakeholders (ranging from PPAT to NGOs). The empirical data were gathered through fieldwork in selected rural communities across Java, Bali, and Sumatra. This dual approach integrates normative legal analysis with empirical findings to offer a contextualized understanding of the application of Islamic law. This study reveals that Islamic law, when contextualized with local customs, offers a viable framework to overcome cultural and legal barriers. Notably, the principle of *an-taradhin* demonstrates potential to uncover the issue of women's land and inheritance rights amidst legal and customary conflicts in Indonesia. This study also recommends breakthroughs by providing some lessons from other cases of implementing *an-taradhin* in various

regions (such as in the Sundanese, Sampang, and Yoruba communities). This study contributes primarily to Islamic legal studies with significant implications for customary law reform and gender justice, by proposing the integration of Sharia-based principles such as *maslahah* and *an-taradhin* within pluralistic legal systems.

Keywords: Islamic Law; Land Ownership; Inheritance Rights; Women's Rights

Introduction

In the recent decades, women in Indonesia have lack of law protection and land ownership. This problem limited their capacities in agricultural production, economic welfare, and social participation in building the fair domestic policies in society. The fair land ownership is importance, since it provides high values, such as increasing passive income, scaling up their bargaining positions in household, and boarder contribution on social decisions and domestic policies. Despite these high advantages, women's access to land ownership is still limited, since this disparity is partially caused by family *hierarchy*, law framework, and traditional practices. Uniquely, in certain areas of Indonesia, such as Java, Bali, and Sumatera, these barriers took different forms, depending on local customs and social norms which commonly put women in subordinate positions. However, to strenghten the conceptual clarity and analytical depth, the core analysis of this study is centered on Java, with Bali and Sumatra serving as comparative case studies to highlight contextual variations.

In Sumatera, various cultural customs and patriarchal systems particularly in South Sumatera, Lampung, and North Sumatera frequently limit women's land ownership, as traditional *adat* laws prioritize men's property and inheritance rights, leaving women with minimal access. In three villages in Hulu Sungkai, North Lampung, for example, women usually have no access to land due to customs favoring male descendants. In North Sumatera, the *Dalihan Natolu* system further marginalizes women, as inherited land is administered to male family members.¹ This exclusion significantly affects rural women financially,

¹ T Martial et al., "Women's Role in Supporting the Sustainability of Smallholder Coffee Plantations in North Sumatra, Indonesia," *International Journal of Advanced and Applied Sciences* 12, no. 1 (2025): 141–53, <https://doi.org/10.21833/ijaas.2025.01.014>; T Martial and M Asaad, "The Land and Tree Tenure-Based Dalihan Natolu Customs for Tree Management in South Tapanuli, North Sumatra," *International Journal on Advanced Science, Engineering and Information Technology* 6, no. 2 (2016): 180–85, <https://doi.org/10.18517/ijaseit.6.2.696>.

where land is a primary livelihood source. A study revealed that only 28% of rural women in Sumatera own land, compared to 72% of men,² forcing women to depend on male relatives and placing them in vulnerable economic and social positions. In Java, despite state protection of women's land rights under the 1974 Marriage Law-which mandates collective property ownership-malpractices in land registration often result in land being solely registered under the husband's name, especially in rural areas where informal administration dominates and certificates are rarely updated to reflect spousal ownership. A 2019 study found 70% of married women in Javanese rural areas were unaware of their rights, and only 30% of land was registered under wives' names, hampering their legal claims in divorce or disputes.³ In Bali, although state law acknowledges women's inheritance rights, *adat* laws and patrilineal customs dominate, as shown in a 2020 study where 80% of Balinese women received no land inheritance.⁴ Despite advocacy from local NGOs and *Majelis Desa Pakraman*, deeply rooted norms continue to marginalize women, contradicting CEDAW and state protections.⁵

Previous studies on women's land ownership in Indonesia highlighted gradual challenges women commonly deal with in terms of their land access and land protection.⁶ A study on women land ownership in Java revealed that although

² I Harahap, "Women's Position in Patriarchal Kinship System," *Jurnal Ilmiah Peuradeun* 8, no. 1 (2020): 129–42, <https://doi.org/10.26811/peuradeun.v8i1.340>.

³ Achmad Fawaid and Busro Busro, "Contesting Religious Family Rights: Muslim and Hindu Women's Land Ownership in Java and Bali," *Islam Realitas: Journal of Islamic and Social Studies* 5, no. 2 (2019): 202–16, https://doi.org/https://doi.org/10.30983/islam_realitas.v5i2.3059.

⁴ Y P Dewi, "Gendering Adat Law: Women's Rights Activists in Balinese Customary Affairs," in *Gender and Sexuality Justice in Asia: Finding Resolutions through Conflicts*, 2020, 31–44, https://doi.org/https://doi.org/10.1007/978-981-15-8916-4_3.

⁵ I N D Putra and H Creese, "Negotiating Cultural Constraints: Strategic Decision-Making by Widows and Divorcees (Janda) in Contemporary Bali," *Indonesia and the Malay World* 44, no. 128 (2016): 104–22, <https://doi.org/10.1080/13639811.2015.1100869>; H Creese, "The Legal Status of Widows and Divorcees (Janda) in Colonial Bali," *Indonesia and the Malay World* 44, no. 128 (2016): 84–103, <https://doi.org/10.1080/13639811.2015.1100862>; A S Titisari et al., "Do I Have To Choose? Two Children vs Four Children in Bali's Family Planning Program," *Jurnal Biometrika Dan Kependudukan* 11, no. 1 (2022): 98–109, <https://doi.org/10.20473/jbk.v11i1.2022.98-109>.

⁶ J Bayisenge, S Höjer, and M Espling, "Women's Land Rights in the Context of the Land Tenure Reform in Rwanda – the Experiences of Policy Implementers," *Journal of Eastern African Studies* 9, no. 1 (2015): 74–90, <https://doi.org/10.1080/17531055.2014.985496>; S Cole et al., "Gender, Human Rights, and Water Governance in Indonesia," in *Routledge Handbook of Gender and Water Governance*, 2024, 150–63; A Mutolib and H Ismono, "Gender Inequality and the Oppression of Women within Minangkabau Matrilineal Society: A Case Study of the Management of Ulayat Forest Land in Nagari Bonjol, Dharmasraya District, West Sumatra Province, Indonesia," *Asian Women* 32, no. 3 (2016): 23–49, <https://doi.org/https://doi.org/10.14431/aw.2016.09.32.3.23>; I Rubab, "Politics around Women's Landed Inheritance in South Asia The Case of Punjab, Pakistan," in *South Asia from the*

the Marriage Law of 1974 supported spouse ownership to the marriage mortgages between wife and husband, a lot of wife was excluded from their land ownership because of administrative practices during land registrations which frequently registered only husband's name.⁷ In Bali, a study resulted similar finding that although a law progression has been achieved, *adat* law tends to marginalize women in terms of inheritances issue because of patriarchal system which commonly excluded daughters from property rights.⁸ Another research on *Dalihan Natolo* and *adat* laws in North Sumatera highlighted male's strong influence on inheritance ownership rights, in which women were often rejected from land ownership or property right.⁹ It argued that although law framework has been ruled to build the protection of women's property right protection, the cultural systems and *adat* laws still became significant barriers in women's land ownership in Indonesia.

Previous research on women's inheritance rights in Indonesia has predominantly taken a regional or sectoral approach, focusing either on Java, Bali, or Sumatra in isolation. These studies have largely examined the tension between customary practices and statutory law, but have not sufficiently explored the potential role of Islamic legal principles as a unifying and transformative force across diverse cultural landscapes. Furthermore, the notion of integrating Islamic law with *adat* to address gender injustice remains underdeveloped in current scholarship, particularly in comparative, multi-site contexts. Despite existing legal frameworks such as the Marriage Law of 1974 and the Basic Agrarian Law, women in Indonesia continue to face systemic obstacles in exercising their land and inheritance rights. These barriers are especially pronounced in regions governed by strong customary laws, where patriarchal values often override

Margins Transformations in the Political Space, 2025, 39–55, <https://doi.org/https://doi.org/10.4324/9781003529750>; Dewi Ratnaningsih, Irawan Suprpto, and Rahmat Prayogi, "Peningkatan Kemampuan Berpikir Kritis Mahasiswa Dalam Kerangka Lesson Study Melalui Model Pembelajaran Berbasis Masalah," *Edukasi Lingua Sastra* 20, no. 1 (2022); Umi Supraptiningsih et al., "Inequality as a Cultural Construction: Women's Access to Land Rights in Madurese Society," *Cogent Social Sciences* 9, no. 1 (December 31, 2023), <https://doi.org/10.1080/23311886.2023.2194733>.

⁷ Jennifer Brown, "Rural Women's Land Rights in Java, Indonesia: Strengthened by Family Law, but Weakened by Land Registration," *Pacific Rim Law and Policy Journal* 12 (2003), <https://digitalcommons.law.uw.edu/wilj/vol12/iss3/2>.

⁸ S M T Situmeang, A Sandria, and F W Sari, "Legal Protection for Widow without Children in Bali Adat Law Inheritance," *Journal of Engineering and Applied Sciences* 12, no. 2 (2017): 244–47, <https://doi.org/10.3923/jeasci.2017.171.175>.

⁹ Y T Wijanti, "Inequality as a Construct of Customary Law: Access to Home Ownership Rights of Women in Lampung," *El-Usrah* 7, no. 1 (2024): 185–203, <https://doi.org/10.22373/ujhk.v7i1.22456>.

statutory protections. The central research problem addressed in this study is: *How can Islamic law be integrated into Indonesia's plural legal systems to resolve gender-based disparities in land and inheritance rights?* This article aims to achieve two primary objectives. First, to identify and analyze the structural and cultural factors that contribute to women's limited access to land and inheritance rights in Java, Bali, and Sumatra. Second, to examine the potential of Islamic legal principles—particularly the concepts of *an-taradhin* and *maslahah*—as pragmatic solutions for harmonizing gender equity within Indonesia's plural legal context.

This study uses a qualitative approach to explore land ownership and women's inheritance rights in Indonesia. Legal documents such as the Law on Dependent Rights, the Basic Agrarian Law, and CEDAW recommendations are used to understand women's formal rights. This study found gaps in the implementation of women's legal rights, especially in rural areas. Data was collected through interviews between July and December 2024 with families, accountants, PPAT, lawyers, academics, and NGOs in Java, Bali, and Sumatra. The focus of the research varies, from the interaction of family law in Java to customary law in Bali and the impact of patriarchy in Sumatra. The analysis of interviews revealed barriers in land ownership and the role of cultural norms. The recommendation of this study is to promote address an Islamic legal approach to deal with the issue of land rights and women's inheritance in the midst of legal and customary conflicts in Indonesia.

The significance of this study lies in its attempt to offer a legally grounded yet culturally sensitive solution to persistent gender inequities in land ownership. By examining the operationalization of Islamic law within plural legal environments, this research contributes to the broader discourse on Islamic legal reform, gender justice, and the harmonization of state, religious, and customary laws. This study offers a novel integration of Islamic inheritance law with customary systems through the concept of *an-taradhin*, which has not been systematically explored in prior empirical studies across Java, Bali, and Sumatra.

Discussion

Women's Land Ownership in Java: *Gonogonia* Barriers

Java is home to about 60% of Indonesia's population, which is about 120.4 million out of a total population of 203.4 million in 2024. It also has most of the registered land in the country. With a high population density, East Java recorded around 720 people per square kilometre, while Jakarta had 12. 685 people per

square kilometre. The majority of the population, especially in the countryside, identify as Muslims, but many also mix Islamic practices with traditional Javanese beliefs. About 10% of the Muslim population in Java is known as ‘santri’, who follow Islamic practices more strictly.¹⁰

In Java, land ownership is protected by law and custom. However, the implementation of the joint property system is not always consistent.¹¹ The Marriage Act of 1974 states that property acquired during marriage is joint property, as in the tradition of *gonogonia*. However, inheritance or gifts, as well as property purchased before marriage, are considered separate assets. Many people in Java think that the law only regulates existing customs. Decisions about separate assets are usually taken through an agreement.¹²

In Islam, inheritance law is governed by Islamic law, while non-Muslim societies follow the Civil Code. The Compilation of Islamic Law allows Muslims to give up to 33% of their wealth through a will. The remaining property is divided according to the rules of Islamic inheritance. After a husband dies, half of the marital property belongs to the surviving spouse, and the other half is divided according to the rules of inheritance, either by will or without.¹³ However, many families do not follow the Islamic inheritance rules strictly and prefer to follow Javanese customs, where children get an equal share of the property, in contrast to Islamic law which gives a larger share to boys.

According to the Marriage Law, joint property must be divided during divorce in accordance with applicable law. In Islamic law, each spouse is entitled

¹⁰ Fawaid and Busro, “Contesting Religious Family Rights: Muslim and Hindu Women’s Land Ownership in Java and Bali”; N F Habi and A Mudzhar, “Women, Islamic Law and Custom in Pucuk Induk Undang Nan Limo Manuscript of Jambi,” *Abkam: Jurnal Ilmu Syariah* 24, no. 2 (2024): 233–50, <https://doi.org/10.15408/ajis.v24i1.38557>; S Khosyi’ah and A Y Rusyana, “Inheritance Settlement of Descendants of Children and Siblings in Islamic Law with Local Wisdom in Indonesia,” *Cogent Social Sciences* 8, no. 1 (2022), <https://doi.org/10.1080/23311886.2022.2126615>.

¹¹ I Fahimah and W Gusmansyah, “Interfaith Inheritance within Muslim Families in Indonesia: Practices, Philosophical Foundations, and Prospects for the Development of National Inheritance Law,” *Abkam: Jurnal Ilmu Syariah* 24, no. 2 (2024): 379–96, <https://doi.org/10.15408/ajis.v24i2.40907>.

¹² Elfia Elfia, Surwati Surwati, and Bakhtiar Bakhtiar, “The Struggle of Custom and Sharia: Classic Dilemma of Inheritance Settlement in Javanese and Minangkabau Ethnic Communities in Indonesia,” *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023): 75–94, <https://doi.org/10.29240/jhi.v8i1.5480>.

¹³ N N (Rural Farmers), “Interview,” 2024.

to half of the joint property and also has separate property.¹⁴ Divorced couples can negotiate how to divide their assets together. Among Javanese couples, it is common for them to transfer their property to their children even though they are still young, or to divide the property equally if they do not have children. Divorced individuals still have their separate assets.¹⁵

The lack of registered land ownership for women poses two major risks. First, without thinking of themselves as owners, women may not get the full benefits of land, such as influence in household decisions and control over family income. Second, if the ownership is not registered, women can lose their land rights. This can happen if the husband sells the land without consultation, as others may not recognize the woman's ownership. In addition, in a divorce, a woman can lose marital property if it is only registered in the name of her husband, who can claim the land as her own.¹⁶

Women's Land Ownership in Bali: *Awig-Awig* Barriers

Land ownership in Bali has many challenges and complexities. Since the fall of the Suharto regime in 1998, the issue has become increasingly complicated.¹⁷ Discussions about women's land rights have been viewed from various angles, such as imperialism and tourism, but the legal status of individuals has not been fully studied. This gap leads to a huge legal and ethical dilemma, where the principle of equality often contradicts strong patriarchal norms. As a result, women in Bali are in a difficult position, faced with their traditions and individual needs.¹⁸

In Bali, women still experience discrimination in inheritance and marriage, despite national laws.¹⁹ Decentralization of government influences decisions on

¹⁴ I.G.A.K.R. Handayani and B Harahap, "Legislative Legal Politics of Inheritance Law in Indonesia," *Journal of Ecobumanism* 3, no. 6 (2024): 910–16, <https://doi.org/10.62754/joe.v3i6.4059>.

¹⁵ Analiansyah Analiansyah et al., "Polygamy and Women's Rights: An Examination of Divorce Litigation in Sharia Court Rulings Pertaining to Revisions in Indonesian Matrimonial Legislation," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 SE-Articles (November 30, 2024): 761–86, <https://doi.org/10.29240/jhi.v9i2.10833>.

¹⁶ Fawaid and Busro, "Contesting Religious Family Rights: Muslim and Hindu Women's Land Ownership in Java and Bali."

¹⁷ R Sawita, "The Connection Between Land Reform and the 1965–1966 Tragedy in Bali," in *Palgrave Studies in the History of Genocide*, 2018, 89–113, https://doi.org/https://doi.org/10.1007/978-3-319-71455-4_5.

¹⁸ N N (The Legal Office of Bali), "Interview," 2024.

¹⁹ Dewi, "Gendering Adat Law: Women's Rights Activists in Balinese Customary Affairs"; F Obeng-Odoom, "Reproductive Justice in the Hindu Balinese Compound: Community, Property

land rights between men and women. Hindu customary law, especially in rural areas, is often more dominant than national law. Although Hinduism states equality between men and women, roles and rights differ based on gender. Balinese Customary Law governs family and inheritance on the basis of unequal equality, with rights and responsibilities determined by a person's gender and social status.²⁰

Article 1 of the Marriage Law emphasizes gender equality where property acquired during marriage is considered joint property, and both spouses have the same right to manage and claim it in case of divorce. However, the traditional Balinese inheritance law established by Frederik Liefrinck in 1900 puts women, especially widows, at a disadvantage.²¹ This law considers women as a burden in the family, not as independent individuals. In inheritance, girls often only get a small share of their parents' wealth, while boys get more. In addition, responsibility for religious affairs and other duties usually falls into the hands of the brothers.

National laws in Indonesia such as the Agrarian Law, Human Rights, and Marriage support equality and women's right to buy land, but do not take into account women's different economic conditions.²² After decentralization, the Balinese government claimed that national laws were invalid, based on Hindu autonomy and customs, resulting in gender inequality.²³ Many Balinese also do not realize that the customary law they follow is no longer in accordance with

and Development," *Journal of Developing Societies* 40, no. 1 (2024): 27–51, <https://doi.org/10.1177/0169796X231223817>.

²⁰ KIAS) and the Indonesian Legal Aid Foundation (ILAF) NN (Representatives of Komunitas untuk Indonesia yang Adil dan Setara (Indonesian Society for Honesty and Equality, "Interview," 2024.

²¹ Putra and Creese, "Negotiating Cultural Constraints: Strategic Decision-Making by Widows and Divorcees (Janda) in Contemporary Bali"; Creese, "The Legal Status of Widows and Divorcees (Janda) in Colonial Bali."

²² Darlin Rizki, Frina Oktalita, and Ali Sodikin, "Maqasid Sharia Perspective in Changes the Marriage Age Limits for Women According to Law Number 16 of 2019," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 November SE-Articles (December 1, 2022): 487–508, <https://doi.org/10.29240/jhi.v7i2.4016>.

²³ B Mutuku et al., "Role of Gender Policies and Laws in Enhancing Women's Participation in the Resolution of Land Conflicts," *African Journal of Legal Studies* 15, no. 4 (2023): 425–55, <https://doi.org/10.1163/17087384-bja10071>; I W Suyadnya, "The Power Interactions between Adat and the State in the Perspective of Old-Balinese Village of Tenganan Pegringsingan," *Jurnal Kajian Bali* 11, no. 2 (2021): 517–38, <https://doi.org/10.24843/JKB.2021.v11.i02.p15>; I Westendorp, "Personal Status Law And women's Right to Equality in Law and in Practice: The Case of Land Rights of Balinese Hindu women," *Journal of Human Rights Practice* 7, no. 3 (2015): 430–50, <https://doi.org/10.1093/jhuman/huv013>.

local law (*awig-awig*). This is particularly evident in the practice of *nyentana*, a form of marriage that can reinforce gender roles and limit women's autonomy.²⁴ Although women can take their cases to the District Court, the process is long and expensive, making it difficult to access. If women lose, the cost of appeals can be a barrier to access to justice.

Women's Land Ownership in Sumatera: *Dalihan Natolu* Barriers

In many regions of Indonesia, including Sumatra, women experience limitations in land ownership due to the long-standing patrilineal system. This system prioritizes inheritance from the male side, so women often do not have equal access to land and property.²⁵ In North Sumatra, the *Dalihan Natolu* system determines the practice of land inheritance, particularly in the Batak Mandailing-Angkola society. This system traditionally prevented women from inheriting land, as land rights passed through male bloodlines. This results in women not being involved in important decisions related to land use and ownership, which has an impact on economic autonomy and their contribution to family income.

The *Dalihan Natolu* system in North Sumatra and customary law in Lampung show the norms of society that prioritize men in land ownership.²⁶ This law restricts the property rights of women, who are seen as second parties in the household. Strong gender norms create inequality, especially in rural areas, where farmland is a source of livelihood. Women became dependent on men for financial support and decision-making, limiting their economic independence.

A 2025 study showed that women in rural Sumatra face many difficulties in owning land, with only 12% owning land in their name.²⁷ Traditional practices such as the *Dalihan Natolu* system in North Sumatra and the indigenous people in Lampung exacerbate gender inequalities in land access and ownership. Meanwhile, land ownership among men is much higher, with about 65% of rural men in Sumatra owning land, indicating a large gender gap.

²⁴ Obeng-Odoom, "Reproductive Justice in the Hindu Balinese Compound: Community, Property and Development."

²⁵ M Kaban and R Sitepu, "The Efforts of Inheritance Dispute Resolution for Customary Land on Indigenous Peoples in Karo, North Sumatra, Indonesia," *International Journal of Private Law* 8, no. 3–4 (2017): 281–98, <https://doi.org/10.1504/IJPL.2017.087364>.

²⁶ Martial et al., "Women's Role in Supporting the Sustainability of Smallholder Coffee Plantations in North Sumatra, Indonesia"; Martial and Asaad, "The Land and Tree Tenure-Based Dalihan Natolu Customs for Tree Management in South Tapanuli, North Sumatra."

²⁷ Martial et al., "Women's Role in Supporting the Sustainability of Smallholder Coffee Plantations in North Sumatra, Indonesia."

Indonesia has laws protecting women's inheritance rights, like the Marriage Law of 1974 and the Gender Equality Law of 1999. However, social norms and corrupt institutions often undermine this protection. In Sumatera, cultural practices frequently disregard these laws, despite legal provisions that guarantee women's rights to inherit land.²⁸ For instance, in South Sumatera, many women are unaware of their inheritance rights due to a lack of legal education and insufficient outreach from legal organizations. This gap in legal awareness continues to marginalize women in land ownership.

A report by Indonesia's Ministry of Agrarian Affairs and Spatial Planning shows that only 25% of women in Sumatra have access to legal knowledge about land rights.²⁹ A smaller percentage understand their rights under the laws of the country. This lack of information hinders their ability to claim land ownership or oppose discrimination in land distribution. Legal proceedings related to land registration and inheritance are often costly, which many women do not have access to, exacerbating their inability to assert their rights.

One of the important factors in the persistence of gender inequality in land ownership is inheritance law that is not properly implemented at the local level. In South Sumatra, although women are legally entitled to inherit property, many families still follow the tradition of preferring men as heirs.³⁰ Even when women are legally entitled, the transfer of property is often delayed or hampered by male family members who control land and decisions regarding property.

Women's dependence on their brothers to access property reduces their autonomy and economic security. Many women depend on fathers, husbands, or sons for land and property, leaving them vulnerable to exploitation. This dependence is more dangerous in cases of domestic violence, where women feel trapped because they do not have financial independence. A study by Komnas Perempuan in 2020 showed that 9.237 of women in rural Sumatra who

²⁸ D Sukarti and H Asyari, "Legal Education on Women's Property Inheritance Rights in South Sumatera," *Ahkam: Jurnal Ilmu Syariah* 23, no. 2 (2023): 497–518, <https://doi.org/https://doi.org/10.15408/ajis.v23i2.32921>.

²⁹ Martial and Asaad, "The Land and Tree Tenure-Based Dalihan Natolu Customs for Tree Management in South Tapanuli, North Sumatra."

³⁰ A Suharsono, N Prasetyoningsih, and S Usman, "Women's Inheritance Rights in Indonesia from the Perspective of the Triangular Concept of Legal Pluralism," *El-Mashlahah* 14, no. 2 (2024): 259–80, <https://doi.org/10.23971/el-mashlahah.v14i2.7657>; Sukarti and Asyari, "Legal Education on Women's Property Inheritance Rights in South Sumatera."

experienced domestic violence also depend on the perpetrator, which makes it difficult for them to leave the situation.³¹

How Does Islamic Law Deal with Women's Property Marriage Issues in Java?

The registration of marital property rights and land ownership is regulated by the National Land Agency (BPN), but Islamic Law is possible to provide an alternative perspective. About 62% of registered land in Indonesia is in Java. There are two ways of land registration: sporadic, where the landowner registers himself, and systematic, where the BPN maps and registers land for the village. Registration begins with socialization meetings, which are often held in the evening, so women may not attend. BPN invites residents to fill out registration forms and submit property documents at BPN offices in the village. The required supporting documents include a *girik*, sale and purchase agreement, inheritance letter, or witness statement. In this term, Islamic law is possible to reduce this inequality by offering negotiated property agreements. When BPN requires the agreement, it is important for couples to make an agreement (*prenuptial contract*) ensuring fair property rights, allowing women greater protection.

The registration form only asks for the name of the individual applicant, without explaining that the property can be registered in the name of more than one person. Currently, only about 1.9 million land plots are registered in the BPN registration program, which is about 3% of the total land plots. Of the property rights certificates issued, 30% are in the name of women, 65% are in the name of men, and 5% are in joint names.³² Most of the land registered in the woman's name is a family inheritance, while a small part is purchased with the husband.

In the context of Islam, this issue is possible to deal with by recognizing the cases of Ali r.a. and Fatimah r.a. marriage. When Ali r.a. wanted to marry Fatimah r.a., he had limited financial means, so he offered his armor (*dir'*) as dowry (*mahr*). Prophet Muhammad did not impose a heavy dowry on Ali r.a. but ensured that Fatimah r.a. received something valuable in her marriage. In their household, while Ali r.a. was responsible for providing financial support, Fatimah r.a. retained

³¹ Melya Findi, "Patriarki Dan Kekerasan Terhadap Perempuan Adat," *Kompas.Com*, February 15, 2023, <https://regional.kompas.com/read/2023/03/29/06164211/patriarki-dan-kekerasan-terhadap-perempuan-adat?page=all>.

³² Fawaid and Busro, "Contesting Religious Family Rights: Muslim and Hindu Women's Land Ownership in Java and Bali."

her rights over her own possessions. They worked together in managing household responsibilities without one dominating the other in financial matters.

The data of Java women's lack of ownership highlights the problems in the socialization of the land registration process. Women and their spouses often do not know that they can register land in their names. This happens because women rarely attend socialization meetings and because the registration form only lists one name. During the meeting, the possibility of registering land in the names of both couples was not explained, and several factors contributed to this lack of information. Some officials may be concerned that notifying couples about joint enrolment may affect their decision.³³ In addition, when drafting the Registration Regulations, little attention is paid to how to handle jointly owned marital property in the registration process. Furthermore, it is important for male and female who want to take marriage to have principles of *an-taradhin*, where there was no coercion in financial matters, and women retained ownership of their property. It is in the case of Khadijah r.a., who voluntarily used her wealth to support the Islamic mission of Prophet Muhammad, but this decision was based on mutual consent and agreement.

Many landowners in Java choose to register property in the name of their husbands, because he is considered the head of the household.³⁴ However, decisions about property are often taken together. Couples usually consult each other before making important decisions and often participate in farming activities. In small families, husbands and wives cultivate the land together, and Muslim women are not prevented from working in the fields.³⁵ However, in larger families, they usually do not work in the fields and employ laborers, although women are still aware of the tillage times and finances of the family farm. Married couples are not required to live close to the husband's or wife's family, although

³³ N N (NGO Representative), "Interview," 2025.

³⁴ D Ginting, "Legal Status of Land Deed Officers in Land Registration for Preventing Land Disputes in Indonesia," *Journal of Legal, Ethical and Regulatory Issues* 24, no. Special Issue 1 (2021): 1–9, https://www.ijicc.net/images/Vol5iss2_/59_Ginting_P981_2019R.pdf; D Krismantoro, "The Implementation of Land Registration to Provide Legal Certainty in Indonesia," *Journal of Lifestyle and SDG'S Review* 4, no. 4 (2024), <https://doi.org/10.47172/2965-730X.SDGsReview.v4.n04.pe04291>.

³⁵ I B Lambrecht et al., "It Doesn't Matter at All—We Are Family': Titling and Joint Property Rights in Myanmar," *Land Use Policy* 139 (2024), <https://doi.org/10.1016/j.landusepol.2024.107089>.

often mothers have stronger emotional bonds with daughters, who may live closer to their parents.³⁶

In the context of Islam, the consideration of man as head of the household is not absolute.³⁷ It is clearly acknowledged for the case of Prophet Muhammad and Siti Khadijah r.a. Although Arab traditions at the time favoured men in property ownership, the Prophet respected Khadijah's financial independence and did not take control of her wealth. Khadijah r.a. voluntarily used her wealth to support the Islamic mission, but this decision was based on mutual consent and agreement. This agreement is important for their children because they still have rights to inherited land even though they live separately from their parents.

How Does Islamic Law Deal with Patriarchal Local System Issues in Bali?

Land registration in Bali follows the same way as in Java, but there are major differences in the educational and economic challenges faced by Hindu women, which adversely affect their property rights despite formal equality in some laws.³⁸ In Bali, land is usually registered in the name of a man. This is not because women rarely attend registration meetings, but because Hindu women are considered to have a lower position in society, and their rights to land are not recognized. This situation is similar to that in Java, but the Customary system in Bali does not provide full equality for women in land ownership.

The patriarchal local system issues in Bali are possible to deal with by adjusting some practices in Islam which is suitable with the local practices in Bali. In Islamic tradition, child custody (*badhanah*) is based on the best interests of the child rather than solely on lineage or patriarchal customs. Several cases in the period of Prophet Muhammad and his companions can serve as references for addressing the issue in Bali, where mothers fear losing custody due to customary law favouring the father's family.

³⁶ U Khalil, S Mookerjee, and A Ray, "Post-Marital Residence and Female Wellbeing," *Journal of Population Economics* 37, no. 2 (2024), <https://doi.org/https://doi.org/10.1007/s00148-024-01025-8>; Yusuf Somawinata and Hafidz Taqiyuddin, "Hak Waris Anak Perempuan Di Cimanuk (Antara Kompilasi Hukum Islam Dan Penetapan Pengadilan Agama Nomor 69/Pdt.P/2013/Pdlg)," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 2 November SE-Articles (November 30, 2020): 229–52, <https://doi.org/10.29240/jhi.v5i2.1839>.

³⁷ Syabbul Bachri, "Rekonstruksi Kewarisan Islam: Studi Hermeneutika Ibn Abbas Atas Ayat-Ayat Waris," *Al-Istinbath: Jurnal Hukum Islam* 5, no. 1 May SE-Articles (May 9, 2020): 21–50, <https://doi.org/10.29240/jhi.v5i1.1197>.

³⁸ Krismantoro, "The Implementation of Land Registration to Provide Legal Certainty in Indonesia"; Titisari et al., "Do I Have Tto Choose? Two Children vs Four Children in Bali's Family Planning Program."

In Bali, women cannot inherit property from their father, and widows cannot inherit property from their husbands.³⁹ A man's property generally remains in the family and is inherited to his son. If there are no children, the property can be given to another nephew or brother. This causes widows to depend on their sons or in-laws for shelter and land. Some widows stayed in the family home because one of their children lived together. However, problems can arise if the in-laws want to use the land or house for themselves or if the widow does not follow cultural expectations, such as engaging in romantic relationships outside of marriage.

In the case of Islamic tradition, the issues of inheritance property in Bali are possible to learn some cases in Islam. A well-known hadith narrated by Abu Dawood and Ahmad states that a woman came to the Prophet of Muhammad and said: "*O Messenger of Allah, my womb carried this child, my breasts nursed him, and my lap protected him, yet his father wants to take him away from me.*" The Prophet of Muhammad ruled in favour of the mother, saying: "*You have more right to him as long as you do not remarry.*" This ruling emphasizes that, especially for young children, the mother has the primary right to custody because of her nurturing role. During the caliphate of Abu Bakr r.a., a custody dispute arose. He ruled that a young child should remain with the mother, reinforcing the principle that maternal care is prioritized unless there is a compelling reason otherwise.

Women's dependence on men for land and housing exacerbates domestic violence.⁴⁰ This is the main reason why women file for divorce. Without financial independence, women find it difficult to deal with this situation. Women who rely on new laws and customary law may not get justice in District Court. Upon divorce, a woman is typically returned to her parents by her husband's family, a process known as *mulih deba*. This practice effectively reverts her status to that of a girl without children or marital property, reinforcing the notion that children remain with the father's family.

In Islamic tradition, the case of marital property for children is undertaken by prioritizing the child's well-being (*maslahah*), ensuring that they remain in

³⁹ D Bunga, I N Y Segara, and D.S.A.K. Tus, "Spotlighting the Neglect of Balinese Women's and Children's Rights in Custody Court Decisions," *Udayana Journal of Law and Culture* 8, no. 2 (2024): 233–63, <https://doi.org/10.24843/UJLC.2024.v08.i02.p05>; Dewi, "Gendering Adat Law: Women's Rights Activists in Balinese Customary Affairs"; Situmeang, Sandria, and Sari, "Legal Protection for Widow without Children in Bali Adat Law Inheritance."

⁴⁰ N M P Ariyanti and I K Ardhana, "Psychological Impacts of Domestic Violence against Women in Patriarchal Culture in Bali," *Jurnal Kajian Bali* 10, no. 1 (2020): 283–304, <https://doi.org/10.24843/JKB.2020.v10.i01.p13>.

nurturing environment. Prophet of Muhammad has ruled that custody typically remains with the mother until the child reaches an age where they can decide. If the mother remarries and her new husband is deemed unfit for the child's well-being, custody may be reconsidered. It argues that Islamic law reinforces *maslahah* to make a decision in relating with marital property for children after divorce and decease of their parents, either during the process of *muli' deha* or during the process of *anig-anig*.

Many mothers are afraid of losing custody of their children if they go to court because customary law assumes that children in marriages belong to the father's family.⁴¹ The court usually grants custody to the father, unless the children are very young. Even if a mother gets custody, she may have difficulty making ends meet for her children due to money constraints and poor housing conditions. A 39-year-old divorced woman was hesitant to ask for a divorce from her abusive husband, fearing the loss of half of her public property.⁴² The District Court in Denpasar did not grant his lawsuit. Although he found a new job, his salary was too low to pay a lawyer for an appeal. Her ex-husband got custody of two of their three children, while she only kept custody of her youngest child. Now, he rents a room for himself and his son, unable to afford a better house.

In Islamic tradition, the mother's right to custody is not automatically overridden by the father's lineage, as seen in Balinese customary law. Islamic tradition provides a law of these precedents as reference for advocating fairer child custody that prioritize the child's well-being over rigid patriarchal customs. Islamic tradition has idea of mutual agreement (*an-taradhin*) to deal with this issue of custody. The principle of *an-taradhin* could be applied in mediation between parents in Bali, ensuring that custody decisions are made in the child's best interest rather than solely based on lineage. It is important for head of *adat* to adjust the idea of *an-taradhin* as the mutual agreement (*maslahah*) with the local customs in Bali, such as *ngingsir* and *nyakap*.

The *ngingsir* in Balinese customs is practice when conflicts arise within a family, there is usually an effort to resolve them through *adat* (customary) mediation, involving community leaders or the extended family. This is similar to the principle of *an-taradhin*, where disputes are resolved through discussion and mutual agreement rather than coercion or unilateral decisions. In some Balinese

⁴¹ Bunga, Segara, and Tus, "Spotlighting the Neglect of Balinese Women's and Children's Rights in Custody Court Decisions."

⁴² (Divorce) N N, "Interview," 2024.

communities, especially in more flexible family settings, there is a practice namely *nyakap* where, if the mother is deemed more capable of raising the child after divorce, she retains custody, even though traditional customs usually favour the father's family. This is in line with the Islamic principle of *maslahah*, where child custody (*hadhanah*) is granted to the parent who can provide the best care and well-being for the child. By emphasizing deliberation, justice, and public benefit, Balinese customs actually contain elements that can be harmonized with Islamic principles in various aspects of life, including child custody and inheritance distribution.

How Does Islamic Law Deal with Women's Agricultural Land Issues in Sumatera?

In Sumatra, women's rights to property and inheritance are influenced by laws, customs, and society, but it is possible for Sumatera government and *adat* heads to consider the implementation of Islamic law for dealing with this issue. Indonesian law protects women's rights to inherit and own property, but cultural norms and lack of education often hinder these rights. West Sumatra Province has seen a high rate of violence against women, with 216 cases in 2022 and 228 cases in 2023.⁴³

The Islamic law is possible to address the local customs of Sumatera, The *Dalihan Natolu* system in traditional North Sumatra communities also limits women's land rights and decision-making power, impacting their economic empowerment.⁴⁴ This system prioritizes agreements among the three main elements of Batak society, namely: *Hulabula* (wife-giving relatives), *Dongan Sabutuha* (clan relatives or same lineage), and *Boru* (wife-receiving relatives). Women can adopt the Islamic approach of mutual consultation and agreement within the family to ensure they receive a fair share of land inheritance. In Islam, wealth distribution should be based on consensus that does not harm any party, which can serve as a solution within Batak customs. *Dalihan Natolu* actually upholds the values of justice and balance, which can be harmonized with the Islamic principle of *maslahah*. One way to achieve this is by reinterpreting the role

⁴³ W K Rahayu et al., "The Influence of Mass Media in the Protection of Women through the Implementation of Regional Regulation No. 5 of 2013 on the Protection of Women and Children in West Sumatra Province," *Edelweiss Applied Science and Technology* 9, no. 1 (2025): 1154–62, <https://doi.org/10.55214/25768484.v9i1.4364>; Wijanti, "Inequality as a Construct of Customary Law: Access to Home Ownership Rights of Women in Lampung."

⁴⁴ Martial et al., "Women's Role in Supporting the Sustainability of Smallholder Coffee Plantations in North Sumatra, Indonesia."

of women in this system, not just as *boru* (a lower status in land ownership), but as individuals equally entitled to inheritance.

Additionally, gender inequality exists within the Melayu clan of a Minangkabau matrilineal community, leading to injustice in the management of communal forest land.⁴⁵ The *adat* laws often place men in leadership positions within the *ninik mamak* (traditional male elders) system, which controls land governance. This tradition, in some cases, restricts women's ability to participate in decision-making over communal land and natural resources.

In Islamic law, the women have positions in negotiations and consensus-building on how communal land is managed. It is necessary for government or *adat* heads to incorporate Islamic values into the local tradition.⁴⁶ The *ninik mamak* should involve female heirs in discussions about the use of communal forest resources. Sustainable and equitable land management requires active female participation, ensuring that forest resources are used wisely for the entire community. They need to reform *adat* practices by allowing women to take leadership roles in land governance councils. In the case of Islamic tradition, Khadijah r.a. as a wealthy businesswoman managed her assets independently, showing that women have full control over property in Islam. Umm Sulaym r.a. also owned and managed farmland, demonstrating that Islam recognizes women as independent landowners. Despite the matrilineal nature of Minangkabau society, gender inequality persists in the Melayu clan's communal forest land management.⁴⁷ Applying the Islamic principles of *an-taradhin* (mutual agreement) and *maslahah* (public benefit) can help empower women in decision-making, ensure fair resource distribution, and promote gender justice in traditional land governance.

The main obstacle in the implementation of the inheritance law in Sumatra is the lack of legal education on inheritance rights. Despite the laws in place, many

⁴⁵ Mutolib and Ismono, "Gender Inequality and the Oppression of Women within Minangkabau Matrilineal Society: A Case Study of the Management of Ulayat Forest Land in Nagari Bonjol, Dharmasraya District, West Sumatra Province, Indonesia."

⁴⁶ Laras Shesa, Oloan Muda Hasim Harahap, and Elimartati Elimartati, "Eksistensi Hukum Islam Dalam Sistem Waris Adat Yang Dipengaruhi Sistem Kekerabatan Melalui Penyelesaian Al-Takharuj," *Al-Istinbath: Jurnal Hukum Islam* 6, no. 1 May SE-Articles (May 25, 2021): 145–64, <https://doi.org/10.29240/jhi.v6i1.2643>.

⁴⁷ Ilda Hayati, Fathurrahman Djamil, and Busman Edyar, "Utilization of Land Pawning Objects in Minangkabau in The Perspective of The Scholars of Schools of Thought," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 2 November SE-Articles (December 1, 2022): 597–616, <https://doi.org/10.29240/jhi.v7i2.5457>.

women are unaware of their rights. According to a study by the Indonesian Ministry of Agrarian and Spatial Planning, only 35% of women in Sumatran villages know their inheritance rights according to the law. This problem is especially evident in South Sumatra, where many women are unaware of their rights due to inadequate education.⁴⁸

Despite the challenges, Sumatra is showing signs of positive change. Awareness of women's rights is increasing, and the efforts of NGOs and women's organizations are helping to change people's attitudes towards gender equality in property rights.⁴⁹ In recent years, women have increasingly had the opportunity to negotiate and claim their inheritance rights. In some areas of South Sumatra, women's groups have succeeded in encouraging fairer inheritance practices, so that women can now inherit property just like men.

Actually, Sumatera people have traditions suitable to the Islamic idea of *maslahah* and *an-taradhin* to deal with the issue of agricultural land issues. In Minangkabau, for instance, the adapted system of government, *nigari*, land disputes are resolved through community deliberation, ensuring fairness and mutual agreement. In Islam, Surah Ash-Shura: 38 encourages *shura* (consultation) in decision-making. This practice has impacts on the possible implementation of *an-taradhin*, which aligns with *musyawarah* dan *mufakat* in Minangkabau tradition specifically and Indonesia generally, ensuring that agreements are reached without coercion and with mutual acceptance. Additionally, Minangkabau *adat* also recognizes *sako* dan *pusako* (matrilineal inheritance system). In Minangkabau *adat*, land and property (*pusako*) are inherited through the maternal lineage, ensuring economic stability for women. While men act as custodians (*mamak*), they manage the land for the collective benefit of the family, which aligns with *maslahah*. Islam allows customary inheritance as long as it does not contradict fairness and justice (Surah An-Nisa: 7).

The Islamic law proposed practice of *ukhuwah* (Islamic principles of solidarity) and *an-taradhin* (mutual consent), which align with the local custom of Sumatera, *pela gandong* (brotherhood alliance). The *pela gandong* is a traditional alliance between villages, fostering cooperation, conflict resolution, and mutual

⁴⁸ Sukarti and Asyari, "Legal Education on Women's Property Inheritance Rights in South Sumatera."

⁴⁹ Martial and Asaad, "The Land and Tree Tenure-Based Dalihan Natolu Customs for Tree Management in South Tapanuli, North Sumatra."

assistance.⁵⁰ Surah Al-Maidah: 2 reflected Islamic teachings on cooperation and social welfare. In agricultur, farmers are possible to cooperate in land cultivation without financial exploitation, ensuring that everyone benefits (*maslahah*). In Sumatera, it is possible to communal land using agreements between coastal communities ensure that everyone benefits while protecting natural resources (*maslahah*).

Islamic Law as Breakthrough: Lessons Learned from Other Regions

Islamic family law is possible as breakthrough to the issue of gender disparity in land ownership and inheritance rights in Java, Bali, and Sumatera. Islam inheritance law is determined to reduce social disparity, especially in terms of gender inequality in financial sharing. Different from patriarchal system, Islamic law promotes the fair distribution and provides the equal inheritance rights for male and female, as seen in Yoruba and Shia community. This approach is aimed to ensure the unfair gendered inheritance, but distributed according to the equal familial lineage for ensuring women's rights. This section is to explore the possible strategies by which the different regions implement the Islamic law to be compromised with the local customs.

In Sundanese community, for instance, Islamic law is combined with the values of equal gender, as they called as *sanak*. The sons and daughters are equally treated as those who have equal shared lands of *sawah* (paddy field) and *pasir* (dry land). This strategy is based on the law which promote equality of gender in land ownership in three categories, either for *sawah* and *pasir*: (a) land which is fully owned by husband, (b) land which is fully owned by wife, and (c) land which is owned by both of them (as called as *gono-gini*). Of the 98,29 ha of the household land, about 50,6 % are categorized as *gono-gini*, while the full percentage of husband's land is 28,4 % and 21,0 % fully owned by wife. From 111 houses which have own land, about 90,1 % had the lands either from inheritances, gifts, or purchase after marriage. It shows that 43 % household land is owned by female, and 38% owned by male. It argues that combination between *adat* laws and Islamic laws in Java is possibly effective for inheritance system between male and female.⁵¹

⁵⁰ Wijanti, "Inequality as a Construct of Customary Law: Access to Home Ownership Rights of Women in Lampung."

⁵¹ Siti Sugiah Machfud Mugnieszah and Kosuke Mizuno, "Access to Land in Sundanese Community: A Case Study of Upland Peasant Households in Kemang Village, West Java, Indonesia," *Japanese Journal of Southeast Asian Studies* 44, no. 4 (2007): 519–44, https://doi.org/https://doi.org/10.20495/tak.44.4_519.

The case in Sampang Madura shows that combining Islamic law and *adat* law possibly resulted the equal and inclusive approach to the land ownership. The local based inheritance law in Sampang ruled that inheritance must be used and given to those who really need it. However, this is not enough, since the distribution of inherited land could be unfair and not proportional for the certain people. For instance, the deceased parent left a lot of money, and they were given to the heirs based on the rules of Islamic law or *faraid*. However, after this distribution, those who are rich could take some of them for those who are poor, without having to their genders (male or female).⁵² In this case, the inheritance was distributed by considering *maslahah*, which ensures the fair distribution of inheritance from the fortunate persons to the unfortunates of their relatives.

The case of Shia inheritance law also shows that bilateral inheritance approach is possible to promote the equality between male and female. The Shia logics of distribution includes two categories of heirs: *dżawil furudh* (heirs with the fixed shares) and *qarabah* (heirs with the relative shares). The heirs who are not categorized as *dżawil furudh* were categorized by Al-Quran and Hadith as *qarabah*, including both male and female relatives based on proximity to the deceased. In determining these rights, Shia treats the issue of gender by implementing the rules of *nash* about male's and female's shares. Both of them in the level of descendants (*furu'*), parents (*ushul*), siblings, and parents' siblings (*hawasyi*) with the shares which were determined based on the commandment of Al-Quran. The Shia inheritance law also consistently the principles of billateral scenario, ensuring that women are given the inheritance rights with men based on the distribution ratio Al-Quran 2: 1.⁵³ It argues that according to gender perspective, Shia jurisprudence shows the inclusive approach to the female's inheritance rights based on the equality and recognition of the law.

The distribution of inheritance shares in Polewali Mandar, West Sulawesi, especially for sons and daughters, are found in two patterns, including the pattern of Islamic inheritance and the pattern of *adat* inheritance. The patterns of this local inheritance are implemented in the form that they are no longer able to define, either in the form of Islamic law or *adat* law, in the form that they divided the inheritance rights for children, and in the form that they divide the inheritance

⁵² Afidah Wahyuni and Harisah Harisah, "Humanism in Inheritance Distribution in Sampang Madurese Culture," *AHKAM: Jurnal Ilmu Syariah* 19, no. 2 (2019), <https://doi.org/https://doi.org/10.15408/ajis.v19i2.13899>.

⁵³ Elfia, Surwati, and Bakhtiar, "The Struggle of Custom and Sharia: Classic Dilemma of Inheritance Settlement in Javanese and Minangkabau Ethnic Communities in Indonesia."

shares for the sons. However, the heirs still manage the inheritance assets, and the parents' house belong to the youngest children, without distinguishing between the youngest son and the youngest daughter.⁵⁴

Minangkabau *adat* and Islamic law are other cases which had paradoxical, but mutual relationship. However, the harmonious pathway was found, in which the distribution of inheritance shares in the system of matrilineal family can be defended without abusing the Islamic inheritance law.⁵⁵ This pathway is to distribute the family inheritance shares to the top and bottom inheritance, in which the *adat* law is applied for the first one, while the Islamic law (*faraid*) is applied for the later which is known as subsystem of inheritance shares. The top inheritance is called as *wakaf* or *mussabalah* share, based on the rule of *al'adat al-mubakkamah wa al-'urfu qadin* in the Islamic law which refers to customary practices is law as well as jurist.⁵⁶

In Yoruba community, in which *adat* law and state law did not include the women's inheritance rights, Islamic inheritance law provides the structured and equal solutions. As shown in the case of Dar al-Qadha in Lagos, the implementation of Islamic law ensures that either sons or daughters receive the proper shares of inheritance without distinguishing the different gender. This system promotes the social justice their due share of family property, thus addressing gender inequality in inheritance matters. According to Islamic jurisprudence, both men and women have specific, prescribed shares in inheritance, which are based on their relationship to the deceased. The inclusion of women as legitimate heirs, along with men, provides a legal foundation for securing their rights, which is often overlooked in customary legal systems. Islamic inheritance law, as practiced in communities like the Yoruba, ensures that the property is divided fairly and includes the possibility for women to inherit equal shares, demonstrating a balance of gender and equity. These practices

⁵⁴ U Rahman, M Dalip, and A Sewang, "Men and Women in the Distribution of Inheritance in Mandar, West Sulawesi, Indonesia," *Samarah* 6, no. 1 (2022): 156–75, <https://doi.org/10.22373/sjhk.v6i1.9094>.

⁵⁵ Arifki Budia Warman et al., "Strengthening Family Resilience Through Local Wisdom: Pulang Ka Bako Type of Marriage in Minangkabau," *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 May SE-Articles (May 24, 2023): 253–68, <https://doi.org/10.29240/jhi.v8i1.6971>.

⁵⁶ Sidik Tono et al., "The Harmonious Relationship between Minangkabau Custom and Islam in the Distribution of Inheritance," *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)*, 2019, 39–55, <https://doi.org/https://doi.org/10.31436/shajarah.v0i0.931>.

challenge traditional norms that limit women's access to land ownership and inheritance rights.⁵⁷

In Islam, the ratio 2:1 was ruled for women who had shares less than men. However, this difference is not absolute. Sometimes the female's share from inheritance is similar to the male's share. For instance, when two parents inherited their sons, Al-Quran explained that ... *and for the parents, for each of them sixth of his inheritance, if he left that children...* [...] (*wa-li-abawayhi li-kulli wahidin minhuma s-sudusu mimma taraka* [...]). The reason of this case is that parents' needs are similar. If the siblings get inheritance from their brothers who had no parents and children, the maternal sisters from the mother get a sixth, similar with the maternal brothers. In Islam, the case of wife is quite interesting. In some cases, her shares are half of what they would be inherited from their husbands if they are still alive. The implementation of this rule must be taken in place from the fact that husband and wife held their shares and properties independently from each other. Furthermore, both of their shares are arithmetically different; the certain share is more than others.⁵⁸

These above frameworks were potentially adapted in Java, Bali, and Sumatera suitable with standards of national and international human rights. It provides support of law which is more superior for women to get their inheritance and property. However, the challenge is to integrate the legal practice into the cultural and *adat* system strongly rooted in these regions. Furthermore, in order to make sure that this system is possible to be applied in boarder context, the reformation of law and advancement of legal consciousness among the local community are highly needed in terms of their advantages combining the principles of Islamic inheritance in the frameworks of their existing laws.

An-Taradhin as a Practical Solution: An Islamic Law Perspective

In Indonesia, women's inheritance and land ownership rights are often contested, particularly in Java, Bali, and Sumatera. Customary laws and social norms frequently limit women's access to land and inheritance, especially in patriarchal societies like those in Sumatera. In these areas, women's rights to inherit property or land are often restricted, with men being favoured in land

⁵⁷ Abdulmajeed Hassan Bello, "Islamic Law of Inheritance among the Yoruba of Southwest Nigeria: A Case Study of Dar Ul-Qadha (Arbitration Panel)," *Journal of Islamic Law* 5, no. 1 (2024): 44–61, <https://doi.org/10.24260/jil.v5i1.2058>.

⁵⁸ Abdulmajeed B Hassan-Bello, "Islamic Law of Inheritance: Ultimate Solution to Social Inequality against Women in Yorùbá Land," in *Gender and Development in Africa and Its Diaspora* (Routledge, 2018), 143–54, <https://doi.org/https://doi.org/10.4324/9781351119900>.

ownership and inheritance distribution. This creates significant disparities in the distribution of wealth and land, leading to economic and social vulnerability for women, who are often excluded from decision-making processes related to land and property. *An-taradhin* offers a potential solution to this contestation by bridging the divide between the paternalistic and maternalistic inheritance systems, allowing for a more equitable distribution of assets. As Allah (SWT) says in Surah An-Nisa (4:32), “*And do not wish for that by which Allah has made some of you exceed others. For men is a share of what they have earned, and for women is a share of what they have earned.*”

An-taradhin refers to mutual agreement between parties in the Islamic legal tradition, rooted in the principle of fairness (*ridha*) and often applied in property disputes and family law to achieve just resolution without coercion. The concept of *an-taradhin* has emerged as an alternative way to harmonize conflicting inheritance systems. In the context of regions with different *adat*, for instance, *an-taradhin* serves as a synthesis of maternalistic and paternalistic inheritance ideologies, incorporating both social realities and Islamic legal principles. The system relies on mutual consent (*ridha*) from both parties involved in the inheritance process, fostering fairness and agreement in land and property distribution. As found in the Hadith of the Prophet Muhammad, “*None of you will believe until he loves for his brother what he loves for himself*” (Sahih Bukhari), which emphasizes the value of mutual respect and consent. By integrating the flexibility of social customs with the principles of Islamic law, *an-taradhin* provides a platform for addressing gender disparities in inheritance while respecting local cultural norms. This model is particularly valuable in communities where customary practices often conflict with national laws designed to protect women’s rights.

What sets *an-taradhin* apart from traditional inheritance models is its ability to adapt to the unique cultural and social dynamics of different communities.⁵⁹ In Java, Bali, and Sumatera, for example, the application of *an-taradhin* allows for a more flexible interpretation of inheritance rules, accommodating both the values of local customs and the requirements of Shariah law. The integration of these two frameworks—cultural and religious—offers a win-win solution for both men and women, ensuring that women’s rights are protected without undermining

⁵⁹ Muhammad Ibnul Hasan and Rosyidatul Khoiriyah, “Gugatan Harta Waris Terhadap Anak Angkat Analisis Yuridis Terhadap Putusan PA Situbondo No. 0371/Pdt.G/2017/PA.Sit,” *Al-Istinbath: Jurnal Hukum Islam* 4, no. 2 November SE-Articles (November 30, 2019): 231–52, <https://doi.org/10.29240/jhi.v4i2.949>.

traditional practices. As the Qur'an states in Surah Al-Baqarah (2:282), "*And let two witnesses from among your men testify. And if two men are not [available], then a man and two women...*" – this promotes justice and equality in a manner that allows for cultural integration, without compromising the integrity of religious law.

The flexibility of *an-taradhin* makes it a practical solution in areas like Bali and Java, where patriarchal inheritance systems persist. In Bali, for instance, traditional *adat* laws prioritize male heirs, but the introduction of *an-taradhin* could allow women to receive a fairer share of property by involving mutual consent and agreement between family members. This would ensure that women are not left out of inheritance discussions and that their contributions to family and community life are recognized and rewarded. Similarly, in Java, where marital property laws exist but land registration practices often undermine women's rights, *an-taradhin* can facilitate a more inclusive approach to property ownership, allowing for joint ownership and preventing future disputes. The Prophet Muhammad said, "*When a person dies, his inheritance must be divided justly*" (Sahih Muslim), reinforcing the importance of fairness in inheritance rights.

In addition to addressing gender inequality, *an-taradhin* also offers a more culturally sensitive approach to legal reform. The system recognizes the importance of maintaining harmony between Islamic law and local traditions. This cultural sensitivity is crucial for gaining community acceptance and ensuring the success of legal reforms in these regions. By allowing communities to uphold their cultural practices while simultaneously ensuring gender equality, *an-taradhin* fosters a sense of ownership and participation among community members, leading to better compliance and enforcement of inheritance laws. As Allah (SWT) instructs in Surah Al-Hujurat (49:10), "*The believers are but brothers, so make peace between your brothers.*" This underlines the importance of unity and mutual cooperation, reinforcing the role of *an-taradhin* in promoting societal harmony.

Ultimately, *an-taradhin* offers a novel solution to the contested issue of women's land ownership and inheritance rights. By combining the flexibility of social traditions with the principles of justice in Islamic law, *an-taradhin* provides a way forward for communities in Sumatera, Java, and Bali to ensure women's rights are respected while preserving cultural integrity. Its application could be extended to other regions facing similar challenges, offering a model for reconciling cultural differences and legal frameworks in the pursuit of gender equality. The Qur'an in Surah An-Nisa (4:7) states, "*For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives*

leave...” This verse affirms that both men and women have rightful claims to inheritance, and *an-taradhin* ensures that these claims are respected, balanced, and fairly distributed according to both local customs and Islamic principles.

Conclusion

This study reveals that, despite the existence of formal legal frameworks such as the 1974 Marriage Law and the Agrarian Law, significant barriers persist in women’s access to land ownership and inheritance rights across Indonesia. These barriers are particularly entrenched in rural communities where customary legal systems—such as *gonoginia* in Java, *anig-anig* in Bali, and *Dalihan Natolu* in Sumatra—continue to marginalize women’s property claims, often subordinating state law to patriarchal norms. The data suggest that Islamic law offers a viable legal pathway to address these inequalities, particularly through principles such as *an-taradhin* (mutual consent) and *maslahah* (public benefit), which emphasize fairness and context-based adaptation. Comparative insights from communities in Sampang, Sundanese regions, Minangkabau, and even Yoruba contexts illustrate that the integration of Islamic principles into customary frameworks can generate more equitable outcomes for women in land and inheritance matters.

Theoretically, this study contributes to the emerging discourse on legal pluralism and gender equity in Muslim-majority societies. It advances the understanding of how Islamic legal frameworks can be adapted not merely enforced within diverse local contexts to address systemic gender-based injustices. The article positions Islamic law not as a rigid alternative to customary law, but as a dynamic and complementary force that can mediate between state regulations and cultural norms. Moreover, by highlighting the concept of *an-taradhin* as a tool for consensual legal reform, the study introduces a new conceptual lens for navigating inheritance disputes in plural legal systems, particularly where formal justice mechanisms fall short in practice. This work also provides a foundation for constructing inclusive legal models that harmonize Islamic jurisprudence with regional adat values, contributing significantly to both Islamic legal studies and gender-focused legal theory.

Despite its contributions, the study acknowledges several limitations. First, its empirical scope is geographically constrained, focusing on selected regions in Java, Bali, and Sumatra, which may not capture the full diversity of customary and Islamic legal practices across Indonesia. Second, while the study engages with field interviews, the depth of analysis could be enhanced through direct observation of

dispute resolution mechanisms or religious court proceedings, particularly in contested inheritance cases. Future research should investigate the role of local NGOs, religious leaders, and state institutions in facilitating legal consciousness and land registration for women. Additionally, comparative research across ASEAN or Global South countries could offer further insight into how Islamic law interacts with customary frameworks in promoting gender justice in land and inheritance law.

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