

Reconciling Civil Code and Customary Law in Chinese Inheritance Disputes in Indonesia

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Abstract

Introduction: This article examines the settlement of inheritance disputes within the Chinese ethnic community in Indonesia, which faces unique challenges due to legal pluralism. The coexistence of inheritance law under the Indonesian Civil Code and traditional Chinese customary law often leads to conflict, particularly regarding gender equality and fairness in the distribution of assets. This tension reflects a broader issue in harmonizing positive law with deeply rooted cultural traditions.

Purposes of the Research: The purpose of this study is to analyze inheritance disputes in the Chinese ethnic community through the perspectives of the Civil Code and Chinese customary law, highlighting points of convergence, areas of conflict, and their implications for legal certainty and justice.

Methods of the Research: This study employs a normative juridical method, focusing on legal norms derived from statutory regulations, court decisions, and legal doctrines concerning inheritance law. The primary legal materials analyzed include relevant provisions of the Indonesian Civil Code (KUHPerdata), particularly those regulating heirs and inheritance distribution, as well as Decision Number: 486/Pdt.G/2023/PN Sby of the Surabaya District Court. Secondary materials consist of scholarly books and journal articles on inheritance law, legal pluralism, and Chinese customary law. All materials were collected through document study and analyzed qualitatively using a descriptive-analytical approach.

Results of the Research: The findings reveal that Chinese customary law remains patrilineal, tending to prioritize male heirs, whereas the Civil Code upholds equality among heirs regardless of gender or birth order. Judicial decisions increasingly prioritize the Civil Code to ensure justice, indicating a shift away from discriminatory customary practices. This study contributes to the discourse by demonstrating how judicial practice reconciles legal pluralism to guarantee equal protection for all heirs.

Keywords: Inheritance Disputes; Chinese Customary Law; Civil Code; Legal Pluralism.

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INTRODUCTION

Indonesia, as a pluralistic nation, consists of diverse ethnicities, cultures, religions, and languages. The Chinese (Tionghoa) community is one example of this diversity. The Chinese ethnic group has existed for hundreds of years before Indonesia gained independence. After independence, the Chinese were officially recognized as one of the ethnic groups in Indonesia through Article 2 of Law Number 12 of 2006 on Citizenship (hereinafter referred to as the Citizenship Law). The article states that Indonesian citizens are native Indonesians and individuals of other nationalities who are legalized as citizens under the law.

The enactment of the Citizenship Law aims to provide legal certainty regarding the citizenship status of Chinese descendants. Chinese individuals born in Indonesia are

regarded as native Indonesian citizens. As Indonesian citizens, the Chinese community naturally enters into marriage and is subject to the laws and regulations in force in Indonesia. Marriage is an essential event in human life. Anthropologically, marriage is part of the life cycle. Sociologically, marriage is a phenomenon in which an individual transitions from bachelorhood or maidenhood to a new social and legal status as husband or wife. This status changes when the marriage produces children, who then call them father and mother.¹ The state guarantees the right of every citizen to establish a family and continue their lineage through a lawful marriage, as regulated in Article 28B paragraph (1) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution). Marriage is regulated under Law Number 16 of 2019 on Amendments to Law Number 1 of 1974 on Marriage, which in Article 1 defines the purpose of marriage as follows: "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty God."

Marriage between a man and a woman carries legal consequences for the husband, wife, and children born from the union. One such consequence appears when either spouse dies, which leads to the distribution of rights and obligations of the deceased person through inheritance.² Inheritance law refers to the rules that govern the transfer of assets from the deceased (*pewaris*) to their heirs, including property of monetary value as well as debts, whether regulated by statute or last will and testament under the provisions of the Indonesian Civil Code (hereinafter referred to as the Civil Code).³ The Chinese ethnic group arrived in Indonesia long before European colonization. During the Dutch colonial period (the Dutch East Indies era), regulations such as Staatsblad 1925 Number 415 Article 131 Indische Staatsregeling (IS) in conjunction with Article 163 paragraph (1) IS classified the population into three groups: 1) Europeans, 2) Foreign Orientals, and 3) Indigenous peoples. Europeans and Foreign Orientals (including the Chinese) were subject to Western civil law (*Burgerlijk Wetboek*), while indigenous Indonesians were governed by customary law.

Inheritance law in Indonesia remains pluralistic. To this day, Indonesia does not have a single, comprehensive statute regulating inheritance. Inheritance law can be understood as a collection of written and unwritten rules governing the transfer of a deceased person's assets to their heirs, determining the share of each heir, and governing their relationship with third parties.⁴ In practice, inheritance operates under multiple legal systems. Indonesia recognizes three inheritance systems: Western civil inheritance law, Islamic inheritance law, and customary inheritance law. The applicable inheritance system depends on the status of the deceased. If the deceased is of Chinese descent or subjects themselves to Western civil law, Western inheritance law applies. If the deceased is Muslim, Islamic inheritance law applies. Meanwhile, if the deceased is an indigenous non-Muslim Indonesian, customary inheritance law applies.

Under the Civil Code, upon the death of a person, their estate automatically passes to their heirs. This transfer includes not only positive rights or assets but also obligations such as debts. According to Subekti, the principle of civil inheritance law is that at the moment the deceased dies, all rights and obligations immediately transfer to their heirs.⁵ Disputes

¹ Dominikus Rato, *Hukum Perkawinan Dan Waris Adat (Sistem Kekerabatan, Bentuk Perkawinan Dan Pola Pewarisan Adat Di Indonesia)* (Surabaya: Laksbang Yustitia, 2011).

² Eman Suparman, *Hukum Waris Indonesia Dalam Perspektif Islam, Adat, BW* (Bandung: Refika Aditama, 2014), p. 1.

³ Dika Ratu Maru'atun et al., "Analisis Pembagian Harta Warisan Kepada Ahli Waris Menurut Hukum Perdata (BW)," *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 1, no. 3 (2024): 350–58, <https://doi.org/10.62383/amandemen.v1i3.449>.

⁴ Salim HS, *Pengantar Hukum Perdata Tertulis (BW)* (Jakarta: Sinar Grafika, 2016), p. 138.

⁵ Zainuddin Ali, *Pelaksanaan Hukum Waris Indonesia* (Jakarta: Sinar Grafika, 2010), p. 81.

among heirs may arise during the inheritance process, particularly involving the deceased's assets or liabilities. Inheritance disputes typically occur within families when two or more parties have conflicting interests in the estate. Article 830 of the Civil Code states that inheritance only occurs upon death; without the death of the property holder, no inheritance issues arise. Therefore, differing interests among heirs can lead to disputes.⁶

Inheritance law is a crucial aspect of Indonesia's legal structure because it concerns the continuation of a person's rights and obligations after death. Due to the absence of a unified inheritance law, Indonesia's inheritance system⁷ is pluralistic, as reflected in the coexistence of the three legal systems: Western civil inheritance law, Islamic inheritance law, and customary inheritance law.⁸ The applicable system depends on the deceased's religion, lineage, or legal preference during their lifetime.⁹ For the Chinese community in Indonesia, inheritance disputes are often complex. They exist at the intersection of Western civil law historically applied to Chinese citizens and traditional Chinese customs still practiced in daily life.¹⁰ On one hand, the Civil Code provides formal legal guidance on inheritance rights and obligations. On the other hand, Chinese customary norms significantly influence how assets are distributed, particularly regarding the roles of sons and daughters and relations between the nuclear and extended family.¹¹

Conflicts frequently arise when written legal rules under the Civil Code contradict customary practices. Such disputes involve not only legal issues but also cultural values, traditions, and family harmony.¹² Thus, studying inheritance dispute resolution among Chinese Indonesians requires examining both perspectives: the Civil Code as positive law and Chinese customary law as a living social reality. In the case heard by the Surabaya District Court, Decision Number 486/Pdt.G/2023/PN Sby, the dispute arose between a widow (the plaintiff) and other heirs following the death of her husband. The contested estate included land, buildings, and several other assets that had not been divided. The plaintiff asserted her rights as a lawful heir under the Civil Code, particularly Article 830, which states that inheritance occurs only because of death. She also based her claim on Article 852, which affirms that a wife has the right to inherit alongside the children of the deceased. The defendants argued that part of the assets belonged to the extended family and were not entirely part of the deceased's estate. However, the plaintiff maintained that all assets acquired during the marriage constituted marital property that must be included in the inheritance. The panel of judges examined evidence including marriage records, land certificates, and witness testimony. Based on the examination, the court concluded that the disputed assets were indeed part of the deceased's estate and should be distributed to the legal heirs. The judges emphasized that under civil law, a wife holds the same status as the children regarding inheritance rights.

In its ruling, the court declared that the plaintiff is a legitimate heir entitled to a portion of her late husband's estate. This decision reinforces the principle of fairness in inheritance as set out in the Civil Code, where all lawful heirs have equal rights to the estate regardless

⁶ Hilman Hadikusuma, *Hukum Waris Adat* (Bandung: Citra Aditya Bakti, 2015), p. 116.

⁷ Hilman Hadikusuma, *Hukum Waris Indonesia Menurut Perundangan, Hukum Adat, Hukum Agama Hindu, Islam* (Bandung: Mandar Maju, 2003), p. 15.

⁸ Sudargo Gautama, *Pengantar Hukum Indonesia* (Bandung: Alumni, 2018), p. 112.

⁹ Subekti, *Pokok-Pokok Hukum Perdata* (Jakarta: Jakarta: Intermasa, 2008), p. 90.

¹⁰ Benny G Setianto, "Pluralisme Hukum Dan Dinamika Hukum Keluarga Tionghoa Di Indonesia," *Jurnal Hukum Dan Pembangunan* 44, no. 3 (2014): 423.

¹¹ Lie Hua, *Adat Dan Budaya Tionghoa Dalam Perspektif Hukum Keluarga* (Jakarta: Gramedia, 2010), p. 75.

¹² J Satrio, *Hukum Waris* (Bandung: Citra Aditya Bakti, 2012), p. 54.

of gender or birth order. The Surabaya District Court's ruling illustrates how the Civil Code is applied to inheritance disputes involving the Chinese community, even though Chinese customs still influence family perceptions of inheritance. The decision demonstrates how legal pluralism operates in Indonesia, especially when customary norms conflict with positive law.

Although the Civil Code provides clear and comprehensive rules concerning the classification of heirs and the principle of equality in inheritance distribution, the persistence of Chinese customary norms continues to influence inheritance practices within the Chinese ethnic community. In particular, the patrilineal principle that prioritizes sons especially the eldest often conflicts with the statutory guarantee of equal rights for wives and daughters under the Civil Code. This normative divergence not only creates tension within families but also raises questions regarding legal certainty and the appropriate legal framework to be applied in inheritance disputes.

The tension between these two legal systems is clearly reflected in the Surabaya District Court Decision Number 486/Pdt.G/2023/PN Sby. In this case, the core dispute concerned the exclusion of a widow from full control and recognition as an equal heir over her deceased husband's estate. While the plaintiff relied on Articles 830 and 852 of the Civil Code to assert her equal legal status, the defendants invoked customary understandings that positioned male heirs as primary successors and questioned whether certain assets formed part of the marital estate. The dispute therefore represented not merely a disagreement over property, but a fundamental conflict between statutory principles of equality and customary norms rooted in patrilineal tradition.

This situation reflects a broader legal problem within Indonesia's pluralistic inheritance system. Although customary law continues to function as a living law within society, Indonesia is formally governed by statutory law that emphasizes equality before the law and legal certainty. When these two normative systems collide, particularly in inheritance matters involving gender-based distinctions, it becomes crucial to examine how courts reconcile such differences. Based on this background, the central issues addressed in this study are: (1) how inheritance distribution within the Chinese ethnic community is conceptualized under the Civil Code and Chinese customary law; and (2) how inheritance disputes are resolved when conflicts arise between these two legal systems in judicial practice. Through this analysis, the study seeks to evaluate the role of the judiciary in harmonizing legal pluralism while ensuring justice and equal protection for all heirs.

METHODS OF THE RESEARCH

This study employs a normative juridical approach, which examines law as a system of norms governing inheritance rights and obligations. The analysis focuses on statutory provisions of the Indonesian Civil Code concerning inheritance, relevant constitutional and marriage law regulations, and judicial decisions, particularly Decision Number: 486/Pdt.G/2023/PN Sby of the Surabaya District Court. The legal materials consist of primary materials (statutory regulations and court decisions), secondary materials (scholarly books and journal articles on inheritance law, legal pluralism, and Chinese customary law), and tertiary materials (legal dictionaries). These materials were collected through document study and analyzed qualitatively using a descriptive-analytical method to examine the interaction between statutory inheritance law and Chinese customary norms in dispute resolution.

RESULTS AND DISCUSSION

A. Methods of Inheritance Distribution Among the Chinese Ethnic Community Reviewed from the Civil Code and Chinese Customary Law

Inheritance law is a branch of civil law. Article 528 of the Indonesian Civil Code states that over a property, a person may possess certain legal positions such as ownership, inheritance rights, usufruct, servitudes, pledges, or mortgages. This means that inheritance is classified as a property right. Furthermore, Article 584 Civil Code affirms that inheritance rights constitute one of the methods through which individuals may acquire ownership. Therefore, the law of inheritance is placed in Book II of the Civil Code concerning property rights.¹³ Individuals who are entitled to receive inheritance must meet certain requirements. These include the existence of a deceased person as stipulated in Article 830 Civil Code, the existence of heirs at the time of the decedent's death, and the heirs' legal capacity and eligibility to inherit.¹⁴ Eligibility is assessed based on blood relations and marital status. In the Indonesian Civil Code, heirs are classified into four groups:¹⁵ a) Group I Heirs (Article 852 Civil Code). These heirs have the primary right to inherit. Included in this group are the surviving spouse and the legitimate children, as well as acknowledged illegitimate children. If the decedent leaves a spouse and children, inheritance is divided equally; b) Group II Heirs (Article 854 Civil Code). This group becomes relevant when no Group I heirs exist. It includes the decedent's parents and siblings. The shares are governed by statutory provisions; c) Group III Heirs (Articles 853–858 Civil Code) This group applies when Groups I and II do not exist. It includes grandparents and relatives in the direct ascending line; d) Group IV Heirs (Article 858 Paragraph (2) Civil Code)

This final group consists of collateral relatives such as uncles, aunts, and their descendants. Chinese customary inheritance law is one among many customary inheritance systems that exist and develop in Indonesia. It applies to Indonesian citizens of Chinese descent as part of the wider inheritance law pluralism in Indonesia. This pluralism originates from the colonial legal classifications under Articles 131 and 163 of the *Indische Staatsregeling* (IS), which divided the population into Europeans, Foreign Orientals, and Indigenous peoples, each with different applicable inheritance laws. Although the classification no longer applies today, Chinese Indonesians continue to maintain aspects of their customary inheritance system. In Chinese customary law, inheritance represents the continuation of the family identity of the deceased. Central to this tradition is the *marga* (family surname), which is passed exclusively through male descendants. Daughters, upon marriage, adopt their husband's surname, breaking their lineage with their family of origin. Consequently, under customary Chinese inheritance law, only sons particularly the eldest are considered rightful heirs. Many Chinese Indonesians historically resisted application of the Civil Code inheritance provisions, viewing them as incompatible with customary norms. Civil Code gender-neutral provisions allow women to inherit equally, which conflicts with patrilineal Chinese custom.

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¹³ Maru'atun et al., "Analisis Pembagian Harta Warisan Kepada Ahli Waris Menurut Hukum Perdata (BW)."

¹⁴ *Ibid*, p. 355.

¹⁵ Annisa, "Kelompok Ahli Waris Menurut Kitab UU Hukum Perdata," [fahum.umsu.ac.id](https://fahum.umsu.ac.id/kelompok-ahli-waris-menurut-kitab-uu-hukum-perdata/), 2025, <https://fahum.umsu.ac.id/kelompok-ahli-waris-menurut-kitab-uu-hukum-perdata/>.

colonial legal classifications under Articles 131 and 163 of the Indische Staatsregeling (IS), which divided the population into Europeans, Foreign Orientals, and Indigenous peoples, each with different applicable inheritance laws. Although the classification no longer applies today, Chinese Indonesians continue to maintain aspects of their customary inheritance system.¹⁶ In Chinese customary law, inheritance represents the continuation of the family identity of the deceased. Central to this tradition is the marga (family surname), which is passed exclusively through male descendants. Daughters, upon marriage, adopt their husband's surname, breaking their lineage with their family of origin. Consequently, under customary Chinese inheritance law, only sons particularly the eldest are considered rightful heirs.¹⁷ Chinese customary inheritance law is fundamentally rooted in a patrilineal kinship system that prioritizes the continuation of the male lineage. This structure is deeply influenced by Confucian philosophy, which emphasizes filial piety (xiao), hierarchical family order, and the moral obligation of sons to preserve the family lineage and ancestral worship traditions. Within Confucian thought, the family is regarded as the basic unit of social order. Social harmony is achieved through clearly defined hierarchical relationships, including the relationship between father and son. Sons, particularly the eldest, bear the responsibility of maintaining the family surname, performing ancestral rites, and safeguarding family property. Property is therefore not viewed merely as an individual economic asset, but as a collective family asset intended to sustain the continuity of the patrilineal line.

Daughters, in contrast, are traditionally perceived as members of their future husband's family upon marriage. Because they adopt their husband's surname and become part of another lineage, they are not considered responsible for maintaining their natal family's ancestral continuity. As a result, daughters are often excluded from inheritance or receive a smaller portion. Inheritance distribution in this context reflects not only economic considerations but also symbolic and spiritual obligations embedded in Confucian ethics. Thus, the patrilineal nature of Chinese customary inheritance law is not merely discriminatory practice, but a manifestation of a philosophical worldview that prioritizes lineage continuity, ancestral reverence, and hierarchical familial roles.

Many Chinese Indonesians historically resisted application of the Civil Code inheritance provisions, viewing them as incompatible with customary norms. Civil Code gender-neutral provisions allow women to inherit equally, which conflicts with patrilineal Chinese custom. Customarily, inheritance is transferred through *hibah* (gifts) or symbolic sales without actual payment. If the decedent did not distribute assets before death, the estate must be processed through a Certificate of Heirship issued by a Notary, which – by law – follows the Civil Code. Consequently, customary rules favoring male heirs are often overridden, causing legal disputes.¹⁸ When a notary issues a certificate of inheritance, they refer to the provisions of the Civil Code. This disregards the customary inheritance law of the Chinese ethnic community, which stipulates that only males may become heirs, because the Civil Code provides equal inheritance rights to both sons and daughters. The existence of dual inheritance systems for the Chinese ethnic community leads to disputes regarding which law should apply to them.

¹⁶ Santi Novia Ayu Kurniawati, "Penyelesaian Sengketa Waris Masyarakat Tionghoa (Studi Di Kota Mataram)" (Fakultas Hukum Universitas Mataram, 2020), p.7-8.

¹⁷ Beatrix Benni, "Pewaris Pada Etnis Tionghoa Dalam Pluralitas Hukum Waris Di Indonesia," *Masalah-Masalah Hukum* 44, no. 1 (2010): 1-10, <https://doi.org/10.14710/mmh.44.1.2015.1-10>.

¹⁸ Kurniawati, "Penyelesaian Sengketa Waris Masyarakat Tionghoa (Studi Di Kota Mataram)", p. 8.

One example of applying Chinese customary inheritance law is the practice in which inheritance is given only to sons. Gender-based separation is a custom expressed and accepted within Confucian theory.¹⁹ In inheritance according to Confucius, women hold a lower role and status. Before marriage, a woman is considered part of her father's family. She may receive gifts from her family, such as jewelry. After marriage, she leaves her family of origin and becomes part of her husband's family. Accordingly, inheritance from her parents is given only to sons. Daughters do not receive inheritance from their parents. If they do receive any inheritance, the amount will not be greater than that of the sons.

The application of inheritance distribution based on Chinese customary law is generally practiced by Indonesian citizens of Chinese descent. However, in its development today, many Chinese community members have shifted toward inheritance distribution based on Western civil inheritance law derived from the Civil Code. For some, inheritance distribution under Chinese customary law is considered unfair to heirs who do not receive their rightful share. Another reason for choosing the Civil Code is the absence of written rules that clearly regulate and explain Chinese customary inheritance law.²⁰ Choosing inheritance distribution under the Civil Code is also believed to reduce the risk of family conflict and provide legal certainty regarding the portions received by each heir because the rules are written.²¹ In contrast, the Indonesian Civil Code, adopted from the Dutch *Burgerlijk Wetboek*, is grounded in modern civil law principles emphasizing individual rights, equality before the law, and legal certainty. Under the Civil Code, inheritance is treated primarily as a matter of private property rights rather than lineage continuity. Articles 852 and related provisions clearly establish that heirs within the same group including sons, daughters, and the surviving spouse possess equal legal standing. The distribution of inheritance is not determined by gender, birth order, or customary role, but by legally recognized kinship relations. This reflects the fundamental principle of formal equality, where every individual is treated equally under the law.

Within the Indonesian constitutional framework, this approach aligns with the broader principle of equality before the law as recognized in Article 27 paragraph (1) of the 1945 Constitution. Therefore, although the Civil Code originates from Dutch colonial law, its normative structure supports contemporary constitutional values that reject gender-based discrimination. The contrast between the two systems is therefore clear: a) Chinese customary law prioritizes collective lineage continuity and male succession; b) The Civil Code prioritizes individual rights and equal legal protection. In modern Indonesian society where constitutional principles emphasize equality and non discrimination the Civil Code is often perceived as providing greater legal certainty and fairness, particularly for wives and daughters who would otherwise be marginalized under strictly patrilineal custom.

Indonesia applies a pluralistic inheritance system, meaning that the Chinese ethnic community has two main references, namely the Civil Code and Chinese customary law. Under the Civil Code, inheritance occurs due to the death of the decedent (Article 830 Civil Code), based on the principle that all heirs within the same group receive equal portions, regardless of gender or birth order. Conversely, Chinese customary law remains patrilineal, where sons—especially the eldest—hold the primary position as successors of the family surname. Research shows that in the Chinese community in Banjarmasin, religion also

¹⁹ Benni, "Pewaris Pada Etnis Tionghoa Dalam Pluralitas Hukum Waris Di Indonesia." p. 177.

²⁰ *Ibid*

²¹ Fransiska and Bambang Eko Turisno, "Penyelesaian Pembagian Waris Masyarakat Tionghoa Yang Tidak Memiliki Akta Perkawinan Di Kota Pontianak," *Notarius* 11, no. 2 (2018): 219–47, <https://doi.org/10.14710/nts.v11i2.31099>.

affects inheritance rights; children with different beliefs often do not receive inheritance, reflecting the strong influence of custom in practice. However, developments in urban areas indicate a shift toward a more equitable system following the Civil Code, particularly regarding the status of daughters and wives as heirs.

B. Settlement of Inheritance Disputes by the Defendants Viewed from the Civil Code and Chinese Customary Law

As social beings, humans need others in their lives. From these interactions, friction may arise, including within families. Among the many family problems, inheritance disputes frequently damage familial relationships. This is often due to differing opinions regarding:²² a) The system of inheritance distribution; b) The heirs; c) The form of inherited property; d) Whether a prenuptial agreement exists, affecting separation of original and marital assets. Some members of the Chinese ethnic community still adhere firmly to inheritance customs in which inheritance is given only to sons, while others uphold principles of fairness by giving equal status to sons and daughters. Those who value fairness believe that equal treatment reduces divorce rates caused by a wife's inability to bear a son. Furthermore, women are given equal opportunities to manage ancestral ash or tablets.²³ Article 852 of the Civil Code states: "Children or descendants, even if born from different marriages, inherit the estate of their parents, grandparents, or other blood relatives in the direct ascending line, without distinguishing gender or birth order."

The Civil Code also stipulates that if a husband or wife dies first, the surviving spouse is treated as a legitimate child of the deceased. Children born from the marriage have equal rights to inherit from their parents and blood relatives. A wife receives the same portion as a legitimate child.²⁴ Inheritance disputes within the Chinese ethnic community generally arise from differences between the principles in the Civil Code and the customary values still upheld by many Chinese families. Under the Civil Code, the main principle is equality among heirs. Article 832 of the Civil Code affirms that all heirs, both male and female, have equal rights to the estate of the decedent. Even the spouse is recognized as an heir with full rights to the inheritance portion. The Civil Code also emphasizes that heirs receive not only the active portions but also bear the responsibility of paying the decedent's debts. Thus, the Civil Code provides a balance between rights and obligations so that no party is disadvantaged.²⁵ Conversely, in Chinese customary law, inheritance distribution is heavily influenced by patrilineal values. Sons, particularly the eldest, are regarded as the primary heirs. This concept derives from Confucian traditions that emphasize the responsibility of sons to continue the family lineage and maintain the surname. Therefore, sons generally receive larger portions, while daughters are marginalized or receive nothing, as they are considered to "leave" the family upon marriage. In some cases, religious differences also affect inheritance rights, where children who adhere to different religions than the decedent may be excluded from inheritance because they are seen as no longer following the family's customary rules.²⁶ In practice, these differences frequently trigger disputes among heirs, as

²² Adelina Nasution, "Pluralisme Hukum Waris Di Indonesia" 5, no. 1 (2018): 20–30, <https://doi.org/10.32505/qadha.v5i1.957>.

²³ Benni, "Pewaris Pada Etnis Tionghoa Dalam Pluralitas Hukum Waris Di Indonesia."

²⁴ Rifdah Rudi, "Pembagian Harta Warisan Ayah Jika Ibu Masih Hidup," [hukumonline.com](https://www.hukumonline.com/klinik/a/pembagian-harta-warisan-ayah-jika-ibu-masih-hidup-lt4fabdd35e49d8/), 2024, <https://www.hukumonline.com/klinik/a/pembagian-harta-warisan-ayah-jika-ibu-masih-hidup-lt4fabdd35e49d8/>.

²⁵ Elvania Novita Natajaya, Hazar Kusmayanti, and Betty Rubiati, "Penyelesaian Sengketa Waris Masyarakat Etnis Tionghoa Benteng Melalui Mediasi Ditinjau Dari Kepercayaan Masyarakat Etnis Tionghoa Benteng Dan Peraturan Mahkamah Agung Nomor 1 Tahun 2016 Tentang Prosedur Mediasi Di Pengadilan," *Jurnal Hukum Dan HAM Wara Sains* 3, no. 2 (2024): 226–36, <https://doi.org/10.58812/jhhs.v3i02.1179>.

²⁶ Melisa Ongkowijoyo, "Pembagian Harta Warisan Bagi Ahli Waris Keturunan Tionghoa" (Fakultas Hukum Universitas Airlangga, 2018), <https://repository.unair.ac.id/76095/>.

illustrated in the Surabaya District Court Decision Number: 486/Pdt.G/2023/PN Sby, where the defendants attempted to retain control of the inheritance based on customary practices privileging sons, while the plaintiff claimed her rights based on the Civil Code. The judge emphasized that inheritance must follow the principle of equality as regulated in the Civil Code, ensuring that the decedent's wife and daughters receive their rightful shares, even though custom often sidelines them. This decision reflects a shift in the Chinese Indonesian inheritance paradigm, where legal certainty through the Civil Code is seen as more just than discriminatory customs. Thus, resolving inheritance disputes through the courts demonstrates a confrontation between customary and statutory law, with judges preferring a normative approach to provide fair and equal protection for all heirs.

Beyond the status of heirs, inheritance disputes among the Chinese community are often triggered by responsibility for the decedent's debts and unilateral control of inherited property. The Civil Code strictly states that heirs not only receive rights to the estate but also must settle the decedent's debts (Article 1100 Civil Code). This frequently causes conflict when some heirs wish to control the assets without considering the accompanying obligations. In Chinese custom, unilateral control by the eldest son or the deemed rightful heir is often justified, leading to injustice for other heirs.²⁷ The tension between the Civil Code and Chinese customary law is evident in inheritance cases brought to court, such as Surabaya Decision Number: 486/Pdt.G/2023/PN Sby. In this case, the defendants attempted to control the estate based on custom favoring male heirs, while the plaintiff sought a fair division under the Civil Code. The judge reaffirmed that the principle in Indonesia's positive law is equality, meaning that the rights of wives and daughters cannot be overlooked due to custom. This decision reflects the judiciary's preference for legal certainty under the Civil Code over customary practices that tend to be discriminatory.

Thus, inheritance dispute settlement in the Chinese community reveals the dynamic interaction between two legal systems. The Civil Code provides legal certainty, justice, and a balance of rights and duties, while Chinese customary law emphasizes cultural aspects such as preservation of the surname and male dominance. In practice, many modern Chinese families are abandoning discriminatory customs and following the Civil Code. However, in families that continue to uphold custom, conflicts often arise, leading to court litigation as the final resolution. Therefore, although Chinese customary law remains alive in society, Indonesian courts favor the Civil Code because it aligns better with principles of justice and equality in a state governed by law.²⁸ In the Surabaya District Court Decision Number: 486/Pdt.G/2023/PN Sby, the defendants justified their unilateral control of the estate by invoking Chinese customary practices that prioritize male heirs, particularly the eldest son. However, the court did not declare Chinese customary law invalid per se. Rather, the judge held that customary arguments could not override the binding provisions of the Civil Code governing inheritance. The court emphasized that, under Indonesia's positive law, inheritance rights must be determined based on statutory provisions, particularly Articles 832 and 852 of the Civil Code, which guarantee equal status for all heirs regardless of gender. In this reasoning, customary norms were acknowledged as social practices but were not considered a legally determinative source when they conflicted with codified law. Thus, the court positioned Chinese customary law as a living social norm that may influence

²⁷ Carren Chaterina and Benny Djaja, "Akibat Hukum Terhadap Warisan Yang Dialihkan Tanpa Persetujuan Ahli Waris (Studi Putusan Nomor: 107/PDT.G/2019/PN. PLK)," *UNES Law Review* 6, no. 4 (2024): 10736–43, <https://doi.org/10.31933/unesrev.v6i4.2048>.

²⁸ M Holidi, "Kekuatan Pembuktian Akta Otentik Dalam Proses Peradilan Perdata Pada Pengadilan Negeri Di Yogyakarta," *Juridica* 4, no. 2 (2023): 39–48, <https://doi.org/10.46601/juridicaugr.v4i2.220>.

family expectations, but not as a binding legal basis capable of superseding statutory inheritance rules. The decision reflects a hierarchical approach to legal pluralism, in which statutory law prevails in cases of normative conflict to ensure legal certainty and equality before the law.

CONCLUSION

The coexistence of the Civil Code and Chinese customary law in inheritance matters reflects the broader reality of legal pluralism in Indonesia. While Chinese customary inheritance norms are deeply rooted in a patrilineal tradition influenced by Confucian values and lineage continuity, the Civil Code is founded upon principles of formal equality, individual rights, and legal certainty. The interaction between these two systems reveals a fundamental normative divergence, particularly regarding the status of wives and daughters as heirs. Judicial practice, as illustrated in Decision Number: 486/Pdt.G/2023/PN Sby of the Surabaya District Court, demonstrates that Indonesian courts tend to prioritize statutory inheritance provisions when customary norms conflict with codified law. The court did not invalidate Chinese customary law as a social reality; however, it affirmed that customary practices cannot override binding statutory rules that guarantee equal inheritance rights. These findings suggest that, within Indonesia's contemporary legal framework, positive law functions as the primary mechanism for ensuring non-discrimination and legal certainty in inheritance disputes. For the Indonesian legal system, this indicates a hierarchical model of legal pluralism in which state law ultimately prevails in cases of normative conflict. For the Chinese ethnic community, the shift toward reliance on the Civil Code may contribute to greater gender equality and reduced intra-family disputes, while simultaneously prompting gradual adaptation of customary practices to constitutional principles of justice and equality.

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