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## Gender Equity in Inheritance System: The Collaboration of Islamic and Bugis Luwu Customary Law

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### Abstract:

This article is the result of research on the cultural heritage of the Bugis people of Luwu, South Sulawesi. The research questions that were raised were: how is inheritance practiced among the indigenous people of Bugis Luo, what is the meeting point of inheritance between Islamic law and customary law, and how do Islamic law and customary law combine to create gender. Primary data was collected through in-depth and structured interviews, as well as on-site observation. The analysis was performed using interpretive methods. The study was conducted by analyzing the

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regulations related to the legal issues discussed by analyzing the laws and comparing the decisions of the Luwu and Bugis courts with the perspective of customary law and Islamic law. The analysis used in this study resulted in women and men being equal. Bugis Luwu Sulawesi has a pluralistic hereditary system with both Islamic and traditional elements. Equal rights and rules are general ideas. This research is based on the proposed mixed inheritance model: *masssideppungeng* that links the heirs to family, government, and religious customary authorities, the distribution of assets to field conditions, and proportionally identifies the needs, wants, and goals of the inheritors.

**Keywords:**

Gender equity, Legal Collaboration, Inheritance Systems, Customary Communities (Bugis)

**Abstrak:**

Artikel ini merupakan hasil penelitian tentang budaya warisan masyarakat Bugis di Luwu, Sulawesi Selatan. Pertanyaan penelitian yang diangkat adalah: bagaimana pewarisan dipraktikkan di antara masyarakat adat Bugis Luwu, apa titik temu warisan antara hukum Islam dan hukum adat serta bagaimana hukum Islam dan hukum adat saling berpadu untuk menciptakan kesetaraan gender. Data primer dikumpulkan melalui wawancara mendalam dan terstruktur, serta observasi di tempat. Analisis dilakukan dengan menggunakan metode interpretatif. Kajian dilakukan dengan menganalisis peraturan-peraturan yang terkait dengan masalah hukum yang dibahas dengan analisis undang-undang dan membandingkan putusan pengadilan Luwu dan Bugis dengan perspektif hukum adat dan hukum Islam. Analisis yang digunakan dalam penelitian ini mengarah pada temuan bahwa perempuan dan laki-laki mewarisi secara tidak setara. Bugis Luwu Sulawesi memiliki sistem pewarisan pluralistik dengan unsur Islam dan tradisional. Persamaan hak dan peraturan terikat adalah ide umum. Penelitian ini mengusulkan model warisan blended: *masssideppungeng* yang menghubungkan ahli waris, keluarga, pemerintah, dan otoritas adat agama, pembagian harta berdasarkan kondisi lapangan, dan proporsional mendefinisikan kebutuhan, keinginan, dan tujuan

ahli waris.

**Kata Kunci:**

Kesetaraan Gender; Kolaborasi Hukum; Pembagian Waris;  
Masyarakat Adat; Bugis Luwu

**Introduction**

Inheritance law regulation is one of the arrangements that are quite complex and frequently causes us problems in daily life. Inequitable inheritance distribution frequently results in disagreements between relatives and families, which are subsequently litigated in court.<sup>1</sup> One of the causes of this unfairness is that many indigenous communities in Indonesia continue to practice their traditional inheritance system while being Muslim such Buginese Communities in Luwu,<sup>2</sup> South Sulawesi, Indonesia. Traditional preservation is vitally important for indigenous peoples, but religion must take precedence. Therefore, it is necessary to unite customary with Islamic law, including in the area of inheritance. Studies of inheritance law and religion have been common. Numerous researchers, for example, have investigated the link between local customs and Islam (Febriawanti & Mansur;<sup>3</sup> Fikri & Wahidin;<sup>4</sup> Pongoliu;<sup>5</sup> Siska, Firman, & Rusdinal;<sup>6</sup> Haniru.<sup>7</sup> Others have

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<sup>1</sup> Jasni Sulong, "Kedudukan Mazhab Syafi'i Dalam Amalan Pembahagian Pusaka Dan Wasiat Islam Di Malaysia," *Jurnal Syariah* 16, no. 1 (2008): 163-83.

<sup>2</sup> Asbudi Dwi Saputra, "Pembagian Harta Waris Menurut Sistem Kewarisan Hukum Adat Rongkong Studi Masyarakat Adat Desa Marampa Kecamatan Rongkong Kabupaten Luwu Utara," *Journal I La Galigo : Public Administration Journal* 3, no. 1 (July 7, 2020): 24-31, <https://doi.org/10.35914/ILAGALIGO.394>.

<sup>3</sup> Dinta Febriawanti and Intan Apriyanti Mansur, "Dinamika Hukum Waris Adat Di Masyarakat Bali Pada Masa Sekarang," *Media Iuris* 3, no. 2 (July 2020): 119, <https://doi.org/10.20473/mi.v3i2.18754>.

<sup>4</sup> Fikri, "(Peer Review) Konsepsi Hukum Waris Islam dan Hukum Waris Adat: Analisis Kontekstualisasi dalam Masyarakat Bugis."

<sup>5</sup> Usman Jafar, Mawardi Djalaluddin, Nur Taufiq Sanusi, "Eksistensi Hukum Waris Adat dalam Masyarakat Muslim di Kota Gorontalo dalam Perspektif Sejarah," *Jurnal Diskursus Islam* 6, no. 2 (August 24, 2018): 361-401, <https://doi.org/10.24252/jdi.v6i2.6866>.

<sup>6</sup> Eti Siska, Firman Firman, Rusdinal Rusdinal, "Pergeseran Hukum Waris Adat di Minangkabau (Studi Kasus: Hukum Warisan Tanah Ulayat di Nagari Ladang

investigated the intersection between inheritance law and gender; Haque;<sup>8</sup> Ahmad, Batool, & Dziegielewski;<sup>9</sup> Gultom;<sup>10</sup> Ezeilo;<sup>11</sup> Doss;<sup>12</sup> Mostofa<sup>13</sup>). Although some attempts have been made to address this issue, it is still a lack of how customary and Islamic law combines to reach gender equity.

The concept of gender equity refers to the situation wherein men and women are treated as equals. This concept is usually informed by the concept of justice, particularly in the division of rights and responsibilities between the sexes.<sup>14</sup> As argued by

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Panjang Kecamatan Tigo Nagari, Kabupaten Pasaman, Sumatera Barat),” *Culture & Society: Journal of Anthropological Research* 1, no. 2 (December 31, 2019): 157–63, <https://doi.org/10.24036/csjar.v1i2.26>.

<sup>7</sup> Rahmat Haniru, “Hukum Waris di Indonesia Perspektif Hukum Islam dan Hukum Adat,” *Al-Hukama’: The Indonesian Journal of Islamic Family Law* 4, no. 2 (2014): 456–74.

<sup>8</sup> Muhammad Faizul Haque et al., “Women Rights to Inheritance in Muslim Family Law: An Analytical Study,” *International Journal of Islamic Business & Management* 4, no. 1 (April 2020): 15–26, <https://doi.org/10.46281/ijibm.v4i1.543>.

<sup>9</sup> Mahtab Ahmad, Moazma Batool, and Sophia F Dziegielewski, “State of Inheritance Rights: Women in a Rural District in Pakistan,” *Journal of Social Service Research* 42, No. 5 (October 19, 2016): 622–29, <https://doi.org/10.1080/01488376.2016.1177633>.

<sup>10</sup> Elfrida R Gultom, “Development of Women Position in the Patrilineal Inheritance of Indonesian Society,” *Jurnal Dinamika Hukum* 17, no. 2 (May 31, 2017): 194, <https://doi.org/10.20884/1.jdh.2017.17.2.886>.

<sup>11</sup> Joy Ngozi Ezeilo, “Rethinking Women and Customary Inheritance in Nigeria,” *Commonwealth Law Bulletin* 47, no. 4 (October 2021): 706–18, <https://doi.org/10.1080/03050718.2020.1818596>.

<sup>12</sup> Cheryl Doss et al., “Women, Marriage and Asset Inheritance in Uganda,” *Development Policy Review* 30, no. 5 (September 2012): 597–616, <https://doi.org/10.1111/j.1467-7679.2012.00590.x>.

<sup>13</sup> Md Mostofa, “Rules and Practices of Women’s Inheritance Rights in Islam: Bangladesh Perspective,” *International Journal of Islamic Business & Management* 3, no. 1 (April 2019): 14–20, <https://doi.org/10.46281/ijibm.v3i1.245>.

<sup>14</sup> Shannon M Ruzycki et al., “Association of Physician Characteristics With Perceptions and Experiences of Gender Equity in an Academic Internal Medicine Department,” *JAMA Network Open* 2, no. 11 (November 2019): e1915165, <https://doi.org/10.1001/jamanetworkopen.2019.15165>. See also Maimun, Ainul Haq Nawawi, Abdul Haq Syawqi “The Development of Fiqh Munākahah (Marriage Jurisprudence) Material Course in Madurese Islamic Universities and Its Relation with Gender Equality and Divorce Prevention,” *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 15, no. 2 (2020), <https://doi.org/https://doi.org/10.19105/al->

Sharma and Sharma, gender equity means that men and women have equal access to opportunities, without any biases against them.<sup>15</sup> Carter writes that gender justice means that men and women must not be subjected to fixed roles, subordination, marginalization, or violence.<sup>16</sup> As such, Sharma and Sharma identify four indicators of gender equity: (1) access; (2) participation; (3) control; and (4) fair and equitable benefits.<sup>17</sup> In this context, awareness of the need for gender equity is influenced by social and cultural constructions that distinguish between the sexes and their specific roles and responsibilities.<sup>18</sup> As written by Bericat, gender equity is necessary to address the gendered structural inequalities that exist within society.<sup>19</sup>

Inheritance systems are part of the traditional customs that remain practiced around the world. Referring to Febriawanti and Mansur, inheritance systems are those systems that ascertain the legitimacy of heirs and manage the division of assets (wealth, property, and knowledge) amongst them.<sup>20</sup> Cooper writes that

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Ihkam.v15i2.2734. Murjani Lilik Andar Yuni, "Gender Sensitivity at Judge's Verdicts in Samarinda and Magelang Religious Courts; The Implementation of PERMA Number 03 of 2017," *Al Ihkam: Jurnal Hukum Dan Pranata Sosial* 15, no. 2 (2020), <https://doi.org/https://doi.org/10.19105/al-ihkam.v15i2.2714>.

<sup>15</sup> Radha R Sharma and Neha P Sharma, "Opening the Gender Diversity Black Box: Causality of Perceived Gender Equity and Locus of Control and Mediation of Work Engagement in Employee Well-Being," *Frontiers in Psychology* 6 (2015): 1371.

<sup>16</sup> Michael Carter, "Gender Socialization and Identity Theory," *Social Sciences* 3, no. 2 (May 2014): 242-63, <https://doi.org/10.3390/socsci3020242>.

<sup>17</sup> Sharma and Sharma, "Opening the Gender Diversity Black Box: Causality of Perceived Gender Equity and Locus of Control and Mediation of Work Engagement in Employee Well-Being."

<sup>18</sup> Sue Jackson, "Young Feminists, Feminism and Digital Media," *Feminism & Psychology* 28, no. 1 (February 2018): 32-49, <https://doi.org/10.1177/0959353517716952>. dalam Muhammad Fahmi *et al.*, "Media Representations Of Gender: The Marginalization Of Female Muslim Scholars In Indonesia," *Journal of Critical Reviews* 7, no. 05 (March 1, 2020), <https://doi.org/10.31838/jcr.07.05.44>. M S Manisha and Sunita Mangla, "Social Construction of Gender through Mediated Communication in India," *Journal of Content. Community & Communication Amity School of Communication* 9, no. 5 (2009): 64-67

<sup>19</sup> Eduardo Bericat, "The European Gender Equality Index: Conceptual and Analytical Issues," *Social Indicators Research* 108, no. 1 (2012): 1-28.

<sup>20</sup> Febriawanti, Mansur, "Dinamika Hukum Waris Adat Di Masyarakat Bali Pada Masa Sekarang."

inheritance systems may be divided into bilineal (along both maternal and paternal lines) and unilineal ones (solely along paternal [patrilineal] or maternal [matrilineal] lines).<sup>21</sup> Today, many inheritance systems are pluralistic, being a blend of formal, Islamic, and customary law.<sup>22</sup> It is also affected by factors such as (1) kinship bonds; (2) life events such as marriage, birth, and death; and (3) retirement.<sup>23</sup> This reflects the argument that inheritance law is strongly influenced by kinship systems, as a result of which each society has its means of dividing inherited assets.<sup>24</sup>

As a concept, customary society has been broadly explored in the literature.<sup>25</sup> As written by Nurhayanto and Wildan, customary societies are those that live their own lives and utilize their own worldviews.<sup>26</sup> Davidson writes that customary societies are those peoples who have existed within an area for generations and developed their own values, ideologies, politics, cultures, and territories.<sup>27</sup> In this context, customary societies have particular rights and responsibilities, which they transmit orally and performatively through their stories, expressions, and family

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<sup>21</sup> Elizabeth Cooper, "Inheritance and the Intergenerational Transmission of Poverty in Sub-Saharan Africa: Policy Considerations," *Chronic Poverty Research Centre Working Paper*, no. 159 (2010).

<sup>22</sup> Deo Andika Putra Sihombing, "Pembagian Waris Adat Masyarakat Suku Bugis di Kecamatan Enok, Kabupaten Indragiri Hilir, Provinsi Riau," *Premise Law Jurnal* 1 (2017).

<sup>23</sup> Nora Ellen Groce, Jillian London, and Michael Ashley Stein, "Inheritance, Poverty, and Disability," *Disability & Society* 29, no. 10 (2014): 1554-68; see also Khoiruddin Nasution, "PERAN KURSUS NIKAH MEMBANGUN KELUARGA SEJAHTERA," *AHKAM:Jurnal Ilmu Syariah* 15, no. 2 (March 2016), <https://doi.org/10.15408/ajis.v15i2.2862>.

<sup>24</sup> Sihombing, "Pembagian Waris Adat Masyarakat Suku Bugis di Kecamatan Enok, Kabupaten Indragiri Hilir, Provinsi Riau."

<sup>25</sup> Turnomo Rahardjo, Hapsari D Sulistyani, and Taufik Suprihatini, "Digital Media Literacy in Samin Indigeneous People," ed. Hadiyanto, Maryono, and Budi Warsito, *E3S Web of Conferences* 73 (December 2018): 14018, <https://doi.org/10.1051/e3sconf/20187314018>.

<sup>26</sup> Puji Nurhayanto and Dadan Wildan, "Transformasi Nilai-Nilai Kearifan Lokal Masyarakat Adat Cireundeu," *Sosietas* 6, no. 1 (2016).

<sup>27</sup> Mohammad Mulyadi, "Pemberdayaan Masyarakat Adat dalam Pembangunan Kehutanan," *Jurnal Penelitian Sosial Dan Ekonomi Kehutanan* 10, no. 4 (2013): 224-34.

activities.<sup>28</sup> Customary societies have the freedom to establish their own rules through which they assert control of their land, territory, and resources, thereby maintaining their institutions, cultures, and traditions.<sup>29</sup>

This work is intended to address a gap left unfilled by prior research. At the macro level, this article aims to contribute to the sizable literature on customary inheritance laws and Islamic inheritance laws, as well as the processes and dynamics through which these laws have been implemented. At the micro-level, meanwhile, this study seeks to fill the gap in the literature regarding how was an inheritance practiced amongst the Bugis Luwu customary society, what the inheritance meeting points between Islamic and customary laws, and how Islamic and customary laws blended each other to create gender equity

This article argues that Indonesian inheritance law, which has been dominated by customary systems, is continuously adapting. Collaborative negotiations between Islamic law and customary systems are necessary to create gender equity. This shows that religious spaces are negotiable, adapting to various times and contexts.

## Method

This study explores the inheritance systems used by the Bugis Luwu of South Sulawesi. Various inheritance systems are recognized by the Bugis Luwu, with some being equitable and others not. Primary data were collected through an in-depth and structured interviews, as well as on-site observations at the research location. Data were collected in consideration of availability and efficiency, with the researchers living in the community, observing informants, and listening to their statements regarding their practice of inheritance. Secondary data were collected through an exploration of the literature on Islamic inheritance law,

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<sup>28</sup> Nicholas James Reo and Kyle Powys Whyte, "Hunting and Morality as Elements of Traditional Ecological Knowledge," *Human Ecology* 40, no. 1 (2012): 15-27.

<sup>29</sup> Kyle Whyte, "What Do Indigenous Knowledges Do for Indigenous Peoples?," in *Traditional Ecological Knowledge* (Cambridge University Press, 2017), 57-82, <https://doi.org/10.1017/9781108552998.005>.

customary inheritance law, gender equity, social anthropology, and associated formal law (*Compilation of Islamic Laws, Indonesian Legal Code – Civil, etc.*). Before the research was conducted, the researchers visited the site to collect data from informants—religious leaders, customary leaders, etc.—regarding disputes. Analysis was conducted using the interpretative method.

In-depth interview was chosen to obtain detailed data and meaningful information. More importantly, it was carried out because the decisions were verbally decided and rarely written down, including in the cases discussed here. In the next stage, this study employed two methods of analysis, namely statutory and comparative analysis. The former analyzes the regulations related to the discussed legal issues. Whereas, the later step is comparing those decisions by the Luwu-Buginese practice in the perspectives of customary and Islamic law.

## **Result and Discussion**

### **Gender Inequity in the Luwu Buginese Inheritance System**

The Buginese have diverse views of inheritance and kinship. Differences take place in one place and others. There are equal inheritance rights for men and women. Meanwhile, in some cases, people believe that division of the inheritance must provide sons more shares than daughters. In another case, the division of daughters is greater than sons. Meanwhile, some believe that the eldest son gets a larger share of the inheritance than his siblings. Meanwhile, another part says that the youngest child is the one who gets a larger share of the inheritance than his siblings. Furthermore, other people say that children who are most meritorious to their parents will be given a larger share of the inheritance than other siblings. Especially in Luwu, there are six types of inheritance. This system was reached from the interview and then classified into several parts as shown in table 1 below.



**Table 1. Detail Aspect of Inheritance System**

<b>Source</b>	<b>Statement</b>	<b>Inheritance systems</b>
Ikram (BP's eldest son) and Asiah, BP'S wife (wife of deceased)	BP passed in 2006, leaving a wife, 3 sons, and 3 daughters as well as a land area of 10,000 m <sup>2</sup> , 3 shop houses, and 2 houses. The land was divided evenly amongst the six children. The other assets were divided as follows; one shophouse is rented and the result is shared among the children. Meanwhile, 2 other houses, 1 house in Palopo, was given to the youngest son, and the house in Makassar was given to the third child (daughter).	Equitable rights
IS's wife (Wife of deceased)	IS left behind a wife, 4 sons, and 1 daughter. 1 house is used by the wife while the land, 850 m <sup>2</sup> , was divided for his lineage using the ratio 2:2:2:2:1 (2 for son and 1 for daughter).	Sons received a greater share than daughters
Ishak, ST's husband (Husband of deceased)	ST left behind a husband, 2 sons, and 2 daughters. The 1 shophouse, 1 house, and 500 m <sup>2</sup> land were inherited. The shophouse was given to the 2nd (son) and 3rd daughter. The house and land were divided between the other son and daughter. All the asset has not been divided yet because the	Daughters received a greater share than sons

<p>Umi, KM's daughter (Daughter of deceased)</p>	<p>husband is still alive therefore it is owned by the husband. However, it has been announced already that in the future the asset will be divided as mentioned above</p> <p>KM left behind a wife, 3 sons, and 1 daughter. Assets consisted of 1 house, 380 m<sup>2</sup> of land, and 700 m<sup>2</sup> of the garden. All the assets have not been divided yet because the wife still alive. However, in the future, the land and garden will be divided with the eldest child received a larger share than the others.</p>	<p>The eldest child received the greatest share</p>
<p>Waru, HS's wife (wife of deceased)</p>	<p>HS left behind a wife, 3 sons, and 4 daughters. Assets consisted of two houses and one car. A car was given to the youngest daughter. The first house was occupied by the wife, and the second was sold and the result was divided among the seven children.</p>	<p>The youngest child received the greatest share</p>
<p>Fara, HM's daughter (the second child of the deceased)</p>	<p>HM left behind a son and two daughters. Assets consisted of one house which was given to the second child, a daughter because she is the most faithful daughter.</p>	<p>The most faithful child received the greatest share</p>

Table 1 shows that six inheritance systems are used by the Bugis, especially in Luwu community. In the first case, the wife of the

departed divided assets equitably between her sons and daughters.<sup>30</sup> According to the wife of the deceased, they did not distinguish between their sons and daughters. In the second system, sons receive a larger share of assets than daughters.<sup>31</sup> In the third system, daughters receive a larger share of assets than sons,<sup>32</sup> as they were the ones who dedicate themselves to serving their parents. In the fourth system, the eldest children receive the greatest share of assets,<sup>33</sup> as they are the ones who take on the duties of the departed. In the fifth system, the youngest children receive the largest share<sup>34</sup> because the older children have often achieved economic stability or traveled abroad. In the sixth system, it is the child who has the most dedicated him/herself to the parents who receive the largest share.<sup>35</sup>

Because of the way in which inheritance is handled in Buginese society in Luwu, it is clear that the ties of family and other relationships between the departed and their heirs are given a great deal of importance. The Islamic system appears to be followed only by the second system. When compared to the importance of links to one's family, the religious component does not rank as highly.

Most of the Bugis Luwu society is Muslim; however, they have continued to adhere to customary values and traditions such as maccera Tasi (gratitude for seafood obtained by fishing communities), mappalesso samaja (letting go of vows) followed by the manre sappera' (eating together), rambu tuka (joyful feast), toke' Sampa (raising or hanging heirloom cloths) as an illustration of the implementation of the party which is still considered sacred. When asked what inheritance system they practiced, most informants simply stated "Islamic". In practice, however, the division of assets follows customary laws that are not found in Islamic teachings (*fiqhi al-mawaris*), and this is deemed just by informants.

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<sup>30</sup> Ikram, eldest child of the deceased, *interview*, September 2021.

<sup>31</sup> Haniah, wife of the deceased, *interview*, August 2021.

<sup>32</sup> Ishak, husband of the deceased *interview*, August 2021.

<sup>33</sup> Umi, daughter of the deceased, *interview*, June 2021.

<sup>34</sup> Waru, wife of the deceased, *interview*, July 2021.

<sup>35</sup> Fara, the second child of the deceased, *interview*, June 2021.

The six inheritance systems used by the Bugis Luwu are varied, and injustice may occur when the deceased and/or their spouse desire to divide assets a certain way. This is influenced by the kinship system, wherein discussions often occur within the family without providing heirs an opportunity to express their views. Many would feel ashamed if disputes were brought to court, for example, if the children or heirs disputed their share.

From the perspective of Islamic law, the six inheritance systems applied in Luwu are categorized as injustice. The principle of justice in Islamic inheritance law entails that there must be a balance between the rights acquired in the inheritance and the obligations or burdens of life that must be borne/fulfilled among the heirs; consequently, the meaning of justice in Islamic inheritance law is not measured by the similarity of levels between experts, but by the size of the burden or responsibility assigned to them, in terms of the general condition of society.

If it relates to Amir Syarifuddin's definition of justice as "a balance between rights and obligations and a balance between what is obtained and needs and uses," or a balance between the burdens and responsibilities of equal heirs, then justice will be reflected in the implementation of the distribution of inheritance according to Islam. The ratio of 2:1 applies not only between boys and girls, but also between husband and wife, between fathers and mothers, and between brothers and sisters, all of which, when studied and analyzed in depth, reveal profound insight.<sup>36</sup>

Men, as opposed to women, are accountable for the maintenance of their families in Muslim society. If the woman is still a girl and unmarried, she becomes the responsibility of her parents, guardian, or brother. In contrast, once a woman is married, her relocation falls under her husband's obligation (male). Islamic Shari'ah does not require women to spend their fortune on themselves or their children, even if it is deemed capable/rich. If they are married, providing a living (a place to live, food, and clothing) for the family is

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<sup>36</sup> Amir Syarifuddin, "Hukum Kewarisan Islam," Kencana, 2011, [https://books.google.co.id/books?hl=id&lr=&id=5-UuEAAAQBAJ&oi=fnd&pg=PA168&dq=amir+syarifuddin+keadilan+warisan&ots=yytVKJ3zkD&sig=KivzVL-\\_GF-PYsm4fmsirRSQrEc&redir\\_esc=y#v=onepage&q=amir\\_syarifuddin\\_keadilan\\_warisan&f=false](https://books.google.co.id/books?hl=id&lr=&id=5-UuEAAAQBAJ&oi=fnd&pg=PA168&dq=amir+syarifuddin+keadilan+warisan&ots=yytVKJ3zkD&sig=KivzVL-_GF-PYsm4fmsirRSQrEc&redir_esc=y#v=onepage&q=amir_syarifuddin_keadilan_warisan&f=false).

a *syara'* requirement put on the husband (a man after he marries).<sup>37</sup>

### The Meeting Point of Religious and Customary Law in Inheritance Systems

Diverse inheritance laws are practiced by the Bugis Luwu. The six inheritance systems applied two systems: Islamic and customary. Both are inexorably intertwined with Indonesian history, including its Hindu and Buddhist kingdoms, the rise of Islam, and the colonial era—all of which have influenced the everyday lives of society. According to the cases above, it can be categorised as six combinations as well as can be seen in Table 2 below.

Table 2. Inheritance Systems Used

Case	Inheritance System
Equitable Division	Customary
Greater share for sons	- Islamic
Greater share for daughters	Customary -
Greater share for the eldest child	Customary
Greater share for the youngest child	Customary
Greater share for most dedicated child	Customary

Data compiled from research

The data in Table 2 reveals that the Bugis Luwu group employs six distinct inheritance systems in their inheritance practices; five cases

<sup>37</sup> Fatima Mernissi, "Beyond the Veil, Revised Edition: Male-Female Dynamics in Modern Muslim Society," Saqi Books, 2011, <https://books.google.co.id/books?hl=id&lr=&id=4F-xf-R9vNEC&oi=fnd&pg=PR7&dq=Men,+as+opposed+to+women,+are+accountable+for+the+maintenance+of+their+families+in+Muslim+society.+If+the+woman+is+still+a+girl+and+unmarried,+she+becomes+the+responsibility+of+he.>

of inheritance distribution are carried out utilizing either the customary inheritance system or family discussions. While one case was conducted using a religious system, the ratio of boys to girls was 2:1, indicating that the proportion of boys was twice that of girls. In general, the Bugis Luwu community implements either a customary system or family discussions because they divide inheritance prior to the death of the heir on the grounds that it is safer and distributes it directly to their children, whereas in Islamic inheritance and State Law (Compilation of Islamic Law, civil law) assets are only divided after the death of the heir.<sup>38</sup> Islamic inheritance law has been practiced amongst the Bugis since the first king converted to Islam. Over time, customary and Islamic laws blended to create new traditions, such as those found in table 2. Today, members of the public have difficulty distinguishing between Islamic inheritance law and customary inheritance law.<sup>39</sup>

The Buginese recognize a customary adage (proverb), "*ade' sanrei kisara'e atau sara' sanrei kiade'e*"—custom rests upon Islam, and Islam rests upon custom. As such, Islam and Buginese society are inexorably intertwined and cannot easily be distinguished. This is evident, for example, in the public's general response to the question of what inheritance law is being used; as noted by Zainuddin, "[they say] Islamic law but in reality, they practice customary law".<sup>40</sup> There appears to be an intersection and interaction dimension at the point where customary inheritance law and Islam meet. The family of BP and the wife of AI both stated "*de'ku passilengeng wija-wijakku pada manenguwarengngi warang parang*", i.e., they did not differentiate between their children when dividing their assets. Their three sons and three daughters received land, shops, and houses. All land was divided evenly between the children; the three shops were divided amongst pairs (one shop for every two children); the home in Palopo was given to the youngest son; while the home in Makassar was given to the third

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<sup>38</sup> Azimar Rusydi, religious judge and former chief justice of the Palopo Religious Court, *interview*, September 2021.

<sup>39</sup> Rusydi, religious leader, *interview*, September 2021).

<sup>40</sup> Zainuddin, customary and religious leader, *interview*, July 2021)

child a daughter.<sup>41</sup> The pluralistic inheritance system practiced by the Bugis Luwu reflects incorporating elements of both the Islamic and customary systems that could occur in the methods outlined as follow:

First, similarity in conceptualizing women as inheritors. There are terminological similarities between customary inheritance law and Islamic inheritance law, as it is stated in the Bugis language: "*mallempai uranewe ma'jujungi makkuraiwe*" which indicates that men carry two items while women carry one. This is as highlighted in Surah al-Nisa verse 11 of the Quran, "Allah has commanded that the portion of a son is equivalent to the share of two girls in terms of your children's inheritance."<sup>42</sup>

Second, Equality in rights is the foundation for considering the rights of men and women. Men's rights and women's rights are both entitled to receive inheritance, even though women in the *jahiliyah* period did not receive the inheritance and were instead used as the inheritance that could be inherited by each of their other heirs. However, after Islam came, women were appointed and given the right to receive the inheritance as in surah al-Nisa verse 7, "For men, there is a right to share from the inheritance of both parents and their relatives and for women, there is a right to sever from the inheritance of both. Said<sup>43</sup> emphasized that the relationship between adat and Islam in Sulawesi has existed for a long time and this has then created an acculturation process so that the influence of adat is slowly influenced by Islam. The link between customary and Islamic law in Sulawesi is a long-standing one that is entrenched in acculturation, through which indigenous customs have been influenced by Islam. It is therefore not surprising that Islam and custom are mutually influential.

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<sup>41</sup> Asiah, wife of the deceased, *interview*, August 2021.

<sup>42</sup> Mu'ammarr Zayn Qadafi. "The Contemporary Discussion on Women's Inheritance (A Study on Nasr Hamid Abu Zayd's Interpretation and Its Implication)". *ESENSIA: Jurnal Ilmu-Ilmu Ushuluddin* 12 (2), (2011). Yogyakarta, pp:289-308. <https://doi.org/10.14421/esensia.v12i2.714>.

<sup>43</sup>Muhazzab Said, a Study on the Acculturation of Islam and Local Culture Bungamale as a Local Culture of South Sulawesi, *JICSA: Journal of Islamic Civilization in Southeast Asia* 4, (2), 2015.

Third, similarities in the sanctions and regulations binding members. The *Compilation of Islamic Laws*<sup>44</sup> provides formal guidelines for resolving disputes in matters of inheritance. According to several scholars, the *Compilation of Islamic Laws* is an Indonesian form of *fiqh*.<sup>45</sup> In the second book of this compilation, both women—be they grandmothers, mothers, wives, daughters, granddaughters, sisters, or aunts—and men—be they grandfathers, fathers, husbands, sons, grandsons, brothers, or uncles—are identified as having the right to inherit assets. Jurisprudence also provides guidance for resolving disputes in inheritance matters.

### **Blended Model of Islamic and Customary law to Create Gender Equity**

Amongst the Bugis Luwu, diverse mechanisms are used to divide assets between heirs. This often results in inequity, in part because of diverse understandings of inheritance law and in part because families tend to divide their assets as they please. Many heirs consequently feel as if the assets have not been distributed fairly. Therefore, the author initiated to develop a new model that blends Islamic and customary understandings of inheritance. Table 3 explains the blended models of inheritance used by the Bugis Luwu. It is divided into three models.

Table 3: Blended Models

<b>Member of Society</b>	<b>Model</b>	<b>Description</b>
Religious and	<i>Massideppun</i>	Bringing

<sup>44</sup>The Indonesian compilation of Islamic law (*Kompilasi Hukum Islam*) is a *fiqh* codification document based on the collective *ijtihad* taking into account the various customs and traditions across Indonesia and *mashlahat* (exigency). This Compilation of Islamic Law was formally issued under the Indonesian Presidential Instruction No. 1 of 1991 as a guideline of material law for the Religious Courts, containing three books: the Book of Marriage; the Book of Inheritance, Wills, and Gifts; and the Book of Waqf. Habiburrahman, *Rekonstruksi of Islamic Inheritance Law in Indonesia*, (Jakarta; Kencana Prenada Media Group, 2011). 53. See Also Amin Husein Nasution, *Inheritance Law an analysis of Mujtahid Thought and Compilation of Islamic Law*, (Jakarta; Rajagrafindo Persada, 2012). 12

<sup>45</sup>Syarifuddin Daud, Religious Leader, Ex MUI Leader. Interview July 2021



customary leader	<i>geng</i>	together the main family member and government, religious and customary leaders to discuss the portion.
Government leader, customary leader, and religious leader	Conditional	Assets are divided conditionally based on facts in the field
Religious and customary leader	Proportional	Assets are divided between heirs justly to achieve a specific goal.

Source: *Primary data, collated by researchers*

Model One is *Massideppungeng*. It refers to a process in which the heirs, family, government, and religious customary leaders are assembled. This is intended to provide a further legal foundation for the heirs and distribution of assets, ensuring that items are distributed proportionally and fairly as agreed by all involved. As stated by one informant, in the distribution of assets, it is important to involve the authorities (for example, religious leaders and elders) as they best understand the distribution of assets.<sup>46</sup>

Model two is the conditional distribution of assets in accordance with the facts in the field. The conditional distribution could be formed in several steps. First, all expenses incurred by the death of the departed are subtracted—hospital fees, funeral preparations, outstanding debts, and charity. Second, other debts are settled. Third, the current assets of the heirs are identified. Fourth, the main heir is identified.<sup>47</sup>

Model Three is proportional, in which the heirs and their specific needs, desires, and goals are identified. Heirs are not equal. Some may be economically established, while others may not be. Some have used much of their parents' money for school, marriage, etc.,

<sup>46</sup> Syarifuddin Daud, Religious Leader, *interview*, August 2021.

<sup>47</sup> Rusydi, *interview*, July 2021.

while others have not yet. As stated by one informant, the particular situation of heirs must be considered; for instance, if Son A has had his education funded through his undergraduate degree, and his parents sold land to pay for his marriage while Daughter B lived at home and helped her family while receiving only a high school degree, it would not be just to give the son the larger share. Such factors are considered carefully when dividing assets.<sup>48</sup>

Studies of gender equity have developed models that make it possible to investigate the inheritance issues amongst the Buginese of Sulawesi. The collaborative model used by the authors, which referred to customary and Islamic inheritance law, has enabled them to explore the development of gender equity in Buginese society.

### Conclusion

This article has revealed that the Buginese in Luwu employed various beliefs of inheritance and kinship. There are unequal inheritance rights for males and women. Some people believe the division of the inheritance must grant sons larger shares than daughters. The Bugis Luwu people of Sulawesi have a pluralistic inheritance system including components of both Islamic and customary systems. The shared elements are the notions, equality in rights, and bound regulation. This research proposed blended inheritance methods employed by the Bugis Luwu. Model One is *Massideppungeng*, a procedure through which the heirs, family, government, and religious customary authorities are linked. Model Two is the conditional distribution of assets, in accordance with the facts in the field. Model Three is proportionate, where the heirs and their individual requirements, aspirations, and ambitions are defined. This article thus recommends the creation of a new model, one that integrates religious, customary, and social perspectives to provide an approach to the inheritance that is contextual, adaptive, and gender-equitable. Having only taken the Bugis Luwu as its sample, many findings can still be made. Further research could explore, for example, the dialog between religion and custom that exists amongst

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<sup>48</sup>Azimar Rusydi, religious judge and former chief justice of the Palopo Religious Court, *interview*, July 2021.

the Bugis Luwu of Sulawesi or, more broadly, amongst Indonesia's diverse Muslim-majority population.

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