



LEGAL EDUCATION ON WOMEN'S PROPERTY INHERITANCE RIGHTS IN SOUTH SUMATERA

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Abstrak: Artikel ini menunjukkan kurangnya pendidikan hukum mengenai waris perempuan menyebabkan tidak terpecahkannya persoalan waris perempuan pada masyarakat patrilineal. Berdasarkan penelitian kualitatif pada masyarakat Besemah dan dua universitas besar di Palembang, Sumatera Selatan, Indonesia, artikel ini menunjukkan bahwa walaupun negara sudah melindungi hak-hak waris perempuan dalam berbagai undang-undang, mahasiswa dan masyarakat perlu diberi pendidikan mengenai hukum, hak-hak masyarakat pada umumnya dan hukum waris pada khususnya. Universitas memiliki potensi untuk mempengaruhi masyarakat melalui Tridharma Perguruan Tinggi, yaitu pendidikan, penelitian, dan pengabdian kepada masyarakat. Sebagaimana terlihat dalam kurikulum kampus, mahasiswa dapat dididik melalui pengajaran di ruang kelas dan masyarakat dididik melalui pengabdian kepada masyarakat. Perdebatan di tingkat akademik tentang persoalan waris di masyarakat semestinya terlihat di jurnal-jurnal ilmiah mengingat adanya kesenjangan yang dalam antara teori-teori yang diberikan di kelas dengan praktek-praktek masyarakat. Sayangnya, sebagaimana terlihat pada kurikulum dan publikasi mereka, universitas di Sumatera Selatan tidak menaruh cukup perhatian terhadap kewarisan karena tidak menjadi minat mahasiswa. Dalam program Kuliah Kerja Nyata (KKN), universitas tidak mengadvokasi hukum waris untuk meningkatkan kesadaran masyarakat mengenai praktek waris yang adil, padahal universitas secara tradisional dikenal sebagai sebuah agen perubahan. Jadi, dalam hal ini universitas tidak mengubah masyarakat, melainkan diubah oleh masyarakat.

Kata kunci: Hak-hak perempuan; kewarisan; hukum adat; hukum negara; pendidikan hukum

Abstract: By and large, patrilineal societies still experience the unsolved problem of women's property disinheritance. This article attempts to examine the role of legal education on female inheritance in transforming society regarding the issue in question. Based on a qualitative inquiry in Besemah society and two prominent universities in Palembang, South Sumatera, Indonesia, this article suggests that although the state laws have protected the rights of women to inheritance in various enactments, university students and society must be educated on the laws, the society's rights in general and the law of inheritance in particular. Universities have the potential to influence society through the so-called three devotional services of higher education, namely education, research, and community services. As seen in campus curricula, students can be educated through classroom education, and society can be educated through community services. Debates at the academic level on inheritance problems in society should have been seen in academic journals, as there is a considerable gap between theories in classrooms and practices of society. Unfortunately, as shown in their curriculum and publications, universities in South Sumarera do not pay enough attention to property inheritance because it is not in students' interests. In community service activities, universities have not advocated inheritance law to enhance people's awareness of just inheritance practices, whereas universities are traditionally known as an agent of change. Thus, in this case, universities do not change society but are changed by society.

Keywords: Women's rights; inheritance; customary law; state law; legal education

Introduction

Several studies have found that in patrilineal social institutions, women do not have equal rights to men (Ababsa, 2017); (Kunreuther, 2009); (Roy, 2008); (Moors, 1995); (Mehmood et al., 2022). Paul Bohannan wrote that social institutions are frequently re-institutionalized in law (Bohannan, 2015: 6). As a corollary, inequality in patrilineal social institutions also produces injustice in the legal institutions of the patrilineal society (Mukhopadhyay, 2001). Mukhopadhyay found that in customary society, property transfer and ownership are influenced by gender relations. Considering men are dominant in patrilineal customary societies, traditional institutions regulate that men control their property and means of production (Mukhopadhyay, 2001:14). Therefore, according to Zainal Arifin Haji Munir's research Islamic law is chosen by Muslim women of a patrilineal Lombok society to enjoy justice in inheritance (Munir, 2023: 1627).

Dawson, Schultz, and Shaw (2014) wrote that gender issues in many countries tend to be neglected in judicial education curricula (Dawson et al., 2015:255) although education is essential for marginalized women to enable normative equality as prescribed by laws to become absolute equality. This indicates that a higher level of education is associated with the likelihood of claiming to obtain equal inheritance (Yasun, 2018:100). Thus, education given to the students in the classrooms or to society through community service provides power to women to claim an equal position in inheritance share.

Berg, Horan, and Patel (2020) state that the UN reacts to gender inequality in property through CEDAW, MDGs, and SDGs. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 commits to ensuring the same rights of husband and wife in respect of ownership, acquisition, management, administration, enjoyment, and disposition of property (Berg, 2020:7). UN's MDGs and SDGs target women's equality to men in property rights. In the Millennium Development Goals (MDGs), which ended in 2015 and were replaced by Sustainable Development Goals (SDGs) frameworks, the United Nations highlights the importance of gender equality. Gender equality became the third goal of MDGs, to promote gender equality and women empowerment, which became the fifth goal of SDGs, to achieve gender equality and empower all women and girls.

Gender inequality is identified in inheritance and property practices. Therefore, in 2005, the UN's MDG Taskforce identified the protection of women's inheritance and property rights as a priority towards achieving the third MDG (Berg, 2020: 7).

The UN highlights the practice of inheritance as one of their targets for reform. The target of SDGs in gender equality is to “undertake reforms in order to give women equal rights to economic resources, equal access to ownership and control over land and other forms of property, equal access to financial services, *inheritance* (my italics), and natural resources, in accordance with national laws.” The indicators of gender equality in SDGs are, firstly, (a) the proportion of the total agricultural population with ownership or secure rights over agricultural land by sex and (b) the share of women among owners or rights-bearers of agricultural land by type of tenure. Secondly, the proportion of countries where the legal framework (including *customary law*) guarantees women's equal land ownership and/or control rights (UN, 2020). That is the UN standard of indicators of gender equality. The gender equality indicators in SDGs repeat the word “land ownership” to highlight its importance, which women lack. Land ownership can be gained by transferring property through purchase and inheritance.

The SDGs' target achievement in ratifying countries is its enactment in national laws. Indonesia ratified CEDAW, MDGs, and SDGs to show its commitment. Indonesia signed the CEDAW convention in 1980 and ratified CEDAW by issuing Law No. 7 of 1984 on the Approval of the Convention on the Elimination of All Forms of Discrimination against Women (Bappenas, n.d.). This ratification strengthens the recognition of CEDAW as an international convention and a source of law for Indonesia (Luhulima, 2014: 39). Among the reasons for the ratification was that CEDAW was not in conflict with Indonesia's 1945 Constitution. Indonesia formally acknowledges that ratification influences the principle and the rules of national laws that accept the principle of equal rights for women and men. However, as can be read in the last paragraph of the general explanation of Law No. 7 of 1984, this law states that the CEDAW must be adapted to the culture, customs, and religious norms prevailing widely in Indonesian society. One of the problems in enforcing equality of women to men in Indonesia is that there are various kinship systems—ranging from matrilineal and patrilineal to parental

kinship systems—that influence women's positions, strengthened by religious norms.

Following the commitment to SDGs, Indonesia issued Presidential Regulation No. 59 of 2017 on SDGs and its follow-ups. This Presidential Regulation regulates the national coordinating team and tasks of each party, the involvement of non-government elements in the implementing team and working groups, and documents measuring the achievement of SDGs, consisting of national and regional road maps and action plans, and reporting and funding for SDGs (Bappenas, n.d.-b). According to the *Sustainable Development Report 2022*, Indonesia has achieved 69,16% of all the goals of SDGs at present. Until 2022, however, Indonesia has been labeled 'red' or faced a significant challenge in handling poverty, health, city sustainability, preservation of marine and terrestrial ecosystems, peace, justice, institutions, and a global partnership. Indonesia's achievement of SDGs in 2022 ranks 82 out of 163 countries worldwide. As for the Southeast Asia region, Indonesia ranks 5 out of 10 countries. Therefore, President Joko Widodo, in September 2022, issued a new Presidential Regulation to push the achievement of SDGs, (Databox, 2022) following the new SDGs 2030. The recent one is Presidential Regulation No. 111 of 2022 on the Implementation of SDGs 2030. Among the 17 goals of SDGs to be achieved in 2030, gender equality is the fifth (UN, n.d.).

Thus, following the ratification and regulation of SDGs, the issue of gender equality has become Indonesia's national SDG. In the meantime, Indonesia has customary law communities that are acknowledged by the constitution and laws. The 1945 Indonesian Constitution re-institutionalizes the existence of customary law communities in Article 118 B (2), stating that "the state acknowledges and respects customary law communities and their traditional rights as long as they still exist and follow social development and the principles of the State of Indonesia," that are regulated by laws. In addition to the state's acknowledgment, efforts to adapt customary law to social development and state principles have been made by the Supreme Court. The Supreme Court slowly issued verdicts that respected women as heirs to the property of their parents and husbands (Lev, n.d.: 215-222); (Irianto, 2012: 110).

In the Province of South Sumatra now, or Palembang in Van Vollenhoven's *rechtskringen* (customary law societies), five customary

law societies exist. They are Anak Lakitan, Jelma, Daya, Kubu, Pasemah (Besemah), and Semendo (Kasra, 2016), (Lukito, 1997: 57). Besemah is a patrilineal society in Lahat District and Pagaralam City in South Sumatra province. As a patrilineal society, Besemah's family law is backing the patrilineal system. The patrilineal system is characterized by bride price payment before marriage and patrilocal settlement after marriage.

After a man and a woman love each other and plan to marry, which is called junior agreement (*rasan mude*), the man tells his parents or seniors about his intention to propose to the woman. Then his parents send some representatives to meet the parents of the woman. The meeting is called the senior meeting (*rasan tue*). The senior meeting signs that the bride-taking family is proposing to the girl to the bride-sending family. In a separate place, the bride-sending family asks the bride-to-be about the price she wants from the bride-taking family. After that, the bride-sending family says it to the representative of the bride-taking family. The wedding time is planned, and the price is paid when it is agreed. The payment of the bride price is a sign that the bride is taken from her membership of her parent's clan to move to her husband's clan. The wedding contract is held at the groom's house, and the bride would stay at her husband's house for good (Hafizhah, 2019: 150).

The family line is traced through the male line, and family property is transferred through the male line. In a major patrilineal society, the eldest son receives the most, while the rest of the children would receive property, but less in amount than the eldest son, if they stay at the father's house after marriage. Women do not receive property from their fathers and husbands when they marry outside or virilocal. Women do not transfer property to their children when married outside their fathers' houses because they are their husbands' belongings. That is the social institution of Besemah customary law.

It seems that social and legal institutions in patrilineal societies, in general, and in Besemah society, in particular, are the barriers to achieving the third goal of MDG and the fifth goal of SDG. The patrilineal character of the Besemah people of South Sumatra can be traced back to the historical customary act of *Oendang-oendang Simboer Tjahaja*. Version 1873 of the *Oendang-oendang Simboer Tjahaja* named *Oendang-oendang of Verzameling van Voorschriften in de Lematang-*

Oeloe en Ilir en de Pasemah Landen or the Collection of Laws in the Lands of Lematang Ulu and Pasemah (Gersen, 1873) mention woman's inheritance. This collection ruled that a wife is not her husband's heir, but a wife might inherit her property from her husband if her bride price has been paid off by her husband, as well as to her children in an uxorilocal marriage. Should there be no daughters or daughters' offspring, then the property of the female deceased should be inherited to the female's upline. Women as daughters receive inheritance should there be no son, with the condition that the eldest daughter be inherited more (Gersen, 1873). As the collection shows, Besemah's general view of the past held that women were neither property inheritors nor heirs. Only in certain situations did women become property heirs and inheritors. The situation was when there were no male heirs, and the bride chose an uxorilocal residence.

There are two types of property to be inherited in the Besemah society, namely ancestral property and self-acquired property. Besemah's customary law regulates that ancestral property is for the eldest son. Nevertheless, should the son not be the eldest and no other sons in the family, he may receive the ancestral property. The eldest daughter may receive the ancestral property if no son is in the family. The customary law also regulates that self-acquired property is for the other sons and daughters who do not marry outside, with the provision that the sons' share is more significant than that of the daughters with the formula of $3/5$: $2/5$. In the practices of many families, daughters do not receive even a piecemeal of their parents' property if they marry outside.

A university has the potential to change social norms and practices. This article aims to analyze the role of legal education on women's inheritance rights in transforming society by taking two public universities in Palembang, South Sumatera, as case study.

Method

This paper is a result of research project using qualitative methods. The methods involved were library research for secondary data and field research for primary data. Field work was conducted in Sriwijaya University, Raden Fatah State Islamic University, Higher Religious Court of Palembang, Higher Court of Palembang, Religious Court of Lahat, State Court of Lahat, and Religious Court of Pagaralam. At

that time, the fieldwork was coincided with covid-19 and the mutation season of judges, so that meeting people was quite challenging. However, we met deans of the faculty of law of the Sriwijaya University and that of Raden Fatah State Islamic University, some of their staffs. We also met some judges and could not meet the others because they were on zoom meetings, just moved to another court, or just arrived at the courts. People in Lahat District and Pagaram were interviewed to find information on their practices of inheritance and disinheritance.

Women's Inheritance Rights in Law in Books and Judges' Verdicts

According to law orders, the law in Indonesia consists of national laws and regional laws. Law No. 15 of 2019 on the Alteration of Law No. 12 of 2011 on the Formation of Laws, Indonesian national laws consist of acts, viz the laws issued by national legislative in agreement with the president; the government's regulation as a substitute for the act in critical situations; the government's regulation, viz the regulation issued by the president to implement the act; and the presidential regulation, i.e., the laws issued to implement the act and the government's regulation or higher level of law. The national laws prevail throughout the country. Regional laws, on the other hand, consist of provincial laws, viz. the laws issued by regional legislative in agreement with the governor; and governors' laws to implement the provincial laws; and in lower-level district regulation, that is, the laws issued by the district legislative in agreement with the heads of district or municipality, and the regulations of the district's heads to implement the district regulation. These regional regulations only prevail in provinces or districts/municipalities.

Inheritance issues have been regulated in national laws, i.e., the Civil Law Code, Law No. 1 of 1974 on Marriage, and the Compilation of Islamic Law. The latter is the material source for Religious Courts for Muslim citizens. Indonesian national laws give women positions in inheritance based on women's positions as wife, daughter, and mother. Giving inheritance rights to wives has gone a long way before their rights are acknowledged. The old customs of many patrilineal tribes in Indonesia held that wives were not heirs.

The Indonesian Supreme Court's verdicts broke through the old customary law. Example of this was verdict No. 258 K/Sip/1959 dated 8 August 1959 on the case of the widow of the late Partodimedjo and their

adopted son vs two siblings of the late Partodimedjo. In this case, the siblings of the late Partodimedjo sued the widow of the late Partodimedjo and the late's adopted child for the late Partodimedjo did not survive an offspring, but he left the joint property. The Supreme Court decided that the only customary law that must be paid attention to is that joint property cannot be sued by those other than the children and the surviving wife or husband of the deceased who leave the joint property. Thus, the Supreme Court made a "new" customary law regarding inheritance for wives (Subekti and J. Tamara, 1960: 33-36). Therefore, it is considered a justice if women receive half of the joint property (Subekti and J. Tamara, 1960: 48-56). Since then, joint property rule has prevailed for spouses in Indonesia, even when the inheritance is brought to the Religious Court, since the Compilation of Islamic Law also adopts joint property as the material source in religious courts.

National laws comprehensively regulate inheritance. These laws include the Indonesian Civil Code, Marriage Law No. 1 of 1974, and the Compilation of Islamic Law. The latest is actually a presidential instruction, but it becomes the primary material law for judges in the Religious Courts since there has been no higher law yet on Islamic inheritance to be implemented by the Courts. The variation of laws applied in Indonesia is due to the variety of religious backgrounds of the legal subjects. Before Law No. 3 of 2006 was issued, there was legal pluralism, freeing Indonesian people to choose which law they would be subject to civil and customary laws or Islamic law. When they want to be settled according to civil or customary law, they go to a District Court (State Court). However, they go to the Religious Court when they want to be settled according to Islamic law (Sukarti, 2023: 364).

Pluralism of inheritance law has a long history. Civil, commercial, and bankruptcy issues would be subject to Dutch law in the Dutch colonial period, as to the Royal Decree on 16 May 1846. In addition, this Decree also mentioned some rules and their subjects as the Dutch colonial classified people in the colony (Netherlands Indies) into three classes: *firstly*, those who inhabited the Netherlands Indies were classified into two groups, namely European people and those who were considered to be Europeans and the natives and those who were considered to be natives. *Secondly*, Christians (including the natives who converted to Christianity), non-Arabs, non-Moors, or non-Chinese, and other non-

Muslims or adherents to native religions were equalized to the European group. Other than those criteria, they were equalized to the natives. *Thirdly*, the Dutch civil and commercial laws that had been implemented and would be implemented in the Netherlands Indies also prevailed for all the Europeans and those equalized to the European group. *Fourthly*, all the natives and those equalized to the natives who declared to be subject to European civil and commercial law were no longer bound to customary or Islamic law (Lukito, 2008: 202-203). Based on the Decree, there was pluralism of law in the Netherlands Indies. The Christian natives follow Dutch civil law, Muslim natives follow customary law or Islamic law, and the native religious people follow Dutch civil law. Only after Indonesian independence and a few regimes after that did Indonesia adopt pluralism of law in inheritance.

In 2006 legal pluralism in courts revoked with the passing of Law No. 3 of 2006 on the Amendment of Law No. 7 of 1989 on the Religious Court. After Law No. 3 of 2006 was passed, there is no longer a legal choice for Muslims in inheritance issues when they are brought to the Religious Courts. The general description of Law No. 3 of 2006 says, “the dictum saying ‘the parties who have issues before going to court may consider using which law in distributing inheritance’ is omitted”. With this omission, Muslims since then go to the Religious Courts only, while non-Muslims go to the District Courts for inheritance case settlement. Article 49 of the new law regulates that “the Religious Court has authority to adjudicate, decide, and settle cases of the first instance among Muslims in the fields of marriage, inheritance, testament, gift, endowment, alms; *infaq*; *sadaqah* (charity); and sharia economics. This dictum implies that the only court for Muslims’ inheritance issues is the Religious Courts. Also, civil courts respect this dictum and would decide the case with an unacceptable decision (*Niet Onvankelijke Verklaard*). Many unacceptable cases are found in the study of judicial decisions on women’s inheritance in courts in South Sumatra.

The material laws for inheritance settlement in the Religious Courts refer to Law No. 1 of 1974 on Marriage and the Compilation of Islamic Law. The Marriage Law is referred to in all courts, including the State and Religious Courts. Meanwhile, the Compilation of Islamic Law is a special material for the Religious Courts.

Regarding women’s inheritance in law, Article 35 of Law No. 1 of

1974 lays rules on joint property. It reads that property gained during the marriage becomes joint property. Therefore, when one of the spouses dies, half of their joint property would be the surviving spouse's right.

The Compilation of Islamic Law also acknowledges joint property (Nurlaelawati, 2010: 97). Article 96, Paragraph 1 says that joint property must be divided between the husband and wife should either of them die. Article 180 regulates that a widow receives a quarter of the husband's property if a child does not survive the deceased. However, if the deceased survives by a child, the widow receives 1/8. Therefore, a widow is entitled to half of the joint property, and she is also entitled to the inheritance.

Regarding the position of women as daughters, initially, they had to face difficulties in gaining their inheritance rights, as in many patrilineal customary societies, daughters were not heirs. Again, the Supreme Court broke through the old customary laws and made a "new" law that gave daughters access to the property. The Supreme Court's verdict dated 31 January 1967, No. 136K/Sip/1967, on the case of Salmah (as the plaintiff) vs her elder brother, Haji Fahri (as defendant I) and Haji Fahri's wife, named Siti Dour (defendant II) who occupied seven inherited properties and joint property of their late father who had died in 1928, shows progress for daughter's position in inheritance rights. This verdict is better than that of the first instance court, i.e. the District Court of Padang Sidempuan No. 91 of 1956 Per.Ps, deciding the property of the late H. Moh Arsjad will be divided between the plaintiff and the first defendant following *holong* hate (love) customs. This verdict also determined one house and the land underneath as the plaintiff's right. The first and second defendants asked to appeal to the Higher Court of Medan. However, the verdict of Higher Court of Medan No. 201 of 1958 corrected the verdict of the first instance court of Padang Sidempuan No. 91 of 1956 Per.Ps and decided that 2 ½ (two and a half) houses and the lands underneath as inheritance for the plaintiff in the first instance court/ the defendant in the higher court. When the defendant I in the first instance court (plaintiff in the higher court and cassation petitioner) asked the Supreme Court for cassation on 31 December 1964, the Supreme Court judges decided on 31 January 1967 with Verdict No. 136 K/Sip/1967 that reinforced High Court of Medan's verdict (Sukarti, 2023: 104). Thus, the Supreme Court in the 1960s gave daughters less inheritance than sons.

In the following periods, daughters received an equal portion to sons as indicated in the Cassation Verdict No. 415 K/Sip/1970 dated 16 June 1971, stating that the recent customary law of Tapanuli (North Sumatera) has progressed toward giving the same rights to daughters as sons (Panggabean, 2020: 473). Although the position of daughters has been equalized to that of sons by judges, in 2011, daughters in a patrilineal society still faced discrimination. This is indicated by the verdict issued by Appellate Court of Medan No. 198/PDT/2011/PT-Medan on 13 October 2011 for the case of Marbun's daughters and son. The case went as shown in verdict No. 24/Pdt.G/2009/PN Kis dated 2 December 2009. In this case, the three daughters of Marbun went to the District Court of Kisaran, North Sumatra, to sue their elder brother, Togar Marbun, who occupied all of their parents' property after their parents had died. Their parents left lands, houses, a hotel, a company, and money in bank accounts. Before going to court, the daughters and son had a discussion ending with the son's rejection of giving some of their parents' inheritance to the daughters. The plaintiff asked the court to divide their parents' property equally according to Civil Law Code Article 852, stating there is no difference between males and females. A witness who was the head of customs in Marbun's family said that there are proverbs in Batak's customary law. These are "*dang singgalak mangalean anak bao tungkap mangalean boru*", which means "you do not look up to feed sons neither sit on your stomach to feed daughters", and *ulos na so buruk*, which means a cloth that never deteriorates to respect daughters in the family and to give immovable property to daughters. According to Batak customs, giving to daughters is a must. Giving "the cloth that never deteriorates" does not reduce daughters' rights to inherit property from their parents. The daughters should hold a customary procession by coming to their brother's house, giving meals to their brother, and uttering their intention to the brother (Sukarti, 2023: 104). Thus, daughters should struggle to receive inheritance since it is not given but achieved.

In the Indonesian Civil Law Code, the daughter's inheritance rights were protected as the Code equalizes the inheritance rights of daughters to that of sons. Civil Law Code Article 852 regulates that "children or offspring inherited from their parents, grandparents or blood families without respecting their sexes...they inherit the same shares...". Thus, in this Civil Law Code, daughters have a similar position to sons.

In the Compilation of Islamic Law, daughters' inheritance shares are regulated clearly. Article 176 regulates that daughters shall receive half if she is the only child, but if there are two or more co-daughters, they share $2/3$. If the daughters are together with the sons, then the daughters' share is half of that of the sons.

Regarding the position of women as mothers in inheritance, they are not heirs in almost all customary laws. In patrilineal customary laws, mothers follow their sons, who are the liability holders of caring for parents in a patrilineal society as the eldest son. Only when there is no son would the eldest daughter hold the responsibility. In the Civil Law Code, the positions of mothers are regulated under Article 855, stating that when there is no offspring, neither husband nor wife, either father or mother is predeceased, then the living father or mother would receive a half ($1/2$) should there be one brother or sister of the deceased. Should there be two brothers or sisters, the mother would receive one-third ($1/3$). When there are more than two brothers or sisters, the mother receives a quarter ($1/4$). The brothers and or sisters would receive the rest.

The position of mothers in inheritance is also protected in the Compilation of Islamic Law. According to Article 178, mothers shall receive $1/6$ if the deceased survived by a child, two brothers and sisters, or more. If the deceased is not survived by a child or two brothers and sisters or more, then the mother shall receive $1/3$.

Although women's positions as heirs in law in books are protected, the implementation of law in books needs socialization. University has a significant role in the socialization of law because a university *per se* is a place to discuss new phenomena and trends, new laws, or the interrelation of laws and society and to give critiques on the development in society. The roles of a university, consisting of education, research, and social services, need to be reinforced in order to be able to transform society. Meanwhile, the development is knowledge-driven, as Brennan meant (Brennan et al., 2004: 27).

Legal Education on Inheritance Law

Theoretically, universities as tertiary educational institutions that function as agent of change are believed and idealized to have the capacity to transform society. Some examples are in terms of culture, universities

produce and disseminate ideas. Universities are think-tanks that produce knowledge and ideas that can be exerted to influence stakeholders. Knowledge and ideas produced in universities are instrumental for the development of society. Developed societies are known as societies that respect knowledge, science, and research. In these societies, universities are capital for development as there is a concept known as knowledge-driven development (Brennan et al., 2004: 27).

In Indonesia, universities work under the concept of three duties (dharma) of higher education (*tri dharma Perguruan Tinggi*), namely teaching and education, research, and community service. This function is conceptually and theoretically strategic in progressing society and the nation. Practically, this function is examined when facing realities in the field. In this connection, inequality in a social institution, such as inheritance, for example, inheritance in the Besemah society in South Sumatra, still applies their patrilineal customary inheritance law. On the one hand, the patrilineal customary law of inheritance of the Besemah people and the state that has already acknowledged the inheritance position of women demand that universities take a position about this challenge. Can both universities change the situation in society?

In South Sumatra, there are two state universities, viz. Sriwijaya University and Raden Fatah State Islamic University. The Faculty of Law of Sriwijaya University is the oldest faculty of law in Sumatra and one of the best eight faculties of law in Indonesia (Swaranews.co.id). Meanwhile, Raden Fatah State Islamic University is the first Islamic university in Southern Sumatra. Thus, the two universities in Sumatra and Southern Sumatra are reputable.

The search for the faculties' roles in giving inheritance rights to women began with their visions, missions, and curriculum structures. The faculty of Law of Sriwijaya University only has one study program, viz., legal science. This study program has five specialties: law and judicial system, law and business, law and Islam, law and state, and law and transnational issues (<https://fh.unsri.ac.id>). There is no study program in law and society out of the specialties. However, inheritance issues might match with the law and judicial system and law and Islam.

The vision of the law faculty of Sriwijaya University is “to become a leading, super, and competitive undergraduate and legal science study

program in 2025.” The mission of the faculty is to conduct research in the field of legal science that supports the superior and quality education of undergraduate and study programs of legal science relevant to the development of society, nation, and the state and holding and developing community services that support the education of undergraduate, study program of legal science in order to enhance society's legal awareness and knowledge. Out of four missions in curriculum 2017 (<https://fh.unsri.ac.id>), it seems that the two missions become the spirit of the university's efforts of responding to legal development on women's position in inheritance, on the one hand, and the practice of inheritance law of South Sumatra people, including the society of Besemah, on the other hand.

As an agent of social change, campus transforms society by socializing laws relating to women's position in inheritance so that society has knowledge of laws of inheritance and legal awareness about the position of women in inheritance. However, at this university, customary law, including customary law of inheritance, is no longer the focus of attention at the faculty. In the past, the faculty's vision was customs, but now the vision has changed because of unevaded social change and national development (interview Vice-Dean 1, 2020). It means that with the term “competitive” in the university vision, the orientation of the university changes following social-economic development. In short, the university is “market-driven, not leading the market.”

In the structure of the curriculum, the Faculty of Law offers various branches of laws and subjects that contain inheritance law, such as Islamic law with two credit points, customary law with two credit points, family law and customary inheritance with two credit points, and family law in Islam with two credit points. In addition, the community service program, which is optional, has four credit points; the internship has four credit points; and legal clinics have four credit points (<https://fh.unsri.ac.id>). In these three subjects of legal clinics, students accompanied by lecturers can ideally help poor society when they face legal issues. This clinic trains students in sensitivity and care for poor people. Besides, they are trained in writing lawsuits and other legal skills. According to the Vice Dean, the favorite theme at the legal clinic is the environment, whereas the theme of inheritance is not active (Vice-Dean I, 2020). In writing undergraduate final papers, 90 % of

students' final papers are on penal law. It is not known why they prefer writing about penal law themes (Vice-Dean 1, 2020).

In addition to the curriculum, the search for the position of women in inheritance may also be found in the laboratory of law faculty. The Faculty of Law of Sriwijaya University had a program of education and training for students' legal skills, but unfortunately, the program is no longer active (Vice-Dean I, 2020).

Then, the search for the university's role goes to their journals. Their scientific journal, named *Jurnal Simbur Cahaya*, which is nationally indexed with Sinta and Garuda, covers all fields of law, including customary and Islamic laws. However, from a bird's view of the titles of articles published in 2017-2020, there has been no article about customary law and inheritance law (journal.fh.unsri.ac.id/index.php/simburcahaya). Besides, an international journal titled *Sriwijaya Law Review*, which is indexed in Scopus Q3, also receives articles from research papers on various fields of law, including Islamic and customary laws, normative and empiric laws, and national and international laws. Throughout the publications (from 2020 to 2023), there are three articles on indigenous law and two on gender, viz. in volume 6 no. 1-2, 2022 (ejournal.unsri.ac.id/index.php/slr), but Sriwijaya University's academia writes none of these issues.

In addition to the accredited journals, the journal *Lexlata* also receives articles from researchers in all fields of law. A survey of the articles published in *Lexlata* from the first publication to the last publication (vol. 1 No. 1/2019 to vol. 5 No. 1/2023) found that there is only one article on customary law, entitled "settlement of violation of customary criminal law through customary law". Besides the scientific journals, the university also has a students' public service journal named *Jurnal Pengabdian Sriwijaya*, which receives articles from students' community services. From its first publication in 2013 until the last publication in 2022 (Vol.1 No.1/2013- Vol.10 No. 4/2022), there have been no issues on property inheritance and customary law (ejournal.unsri.ac.id/index.php/jpsriwijaya/issue/archive). These facts mean that inheritance issues are not discussed enough at Sriwijaya University, although the practice of inheritance in patrilineal societies of South Sumatra is still gender biased.

The second largest state university in South Sumatra is UIN Raden Fatah. UIN Raden Fatah was previously named IAIN Raden Fatah.

Initiated by three scholars, namely Rasyid Sidik, Husin Abdul Muin, and Siddik Adim, it was established during a congress of Indonesian ulama in Palembang in 1957. On the last day of the congress, dated 11 September 1957, the Faculty of Islamic Law and Social Knowledge was officially established. In 1975, there were five faculties, three of which were in Palembang, and the other two faculties were successively the Faculty of *Usuluddin* in Curup and the Faculty of Sharia in Bengkulu (<https://sumsel.tribunnews.com/2019/12/29/>); (<http://syariah.radenfatah.ac.id/hal-sejarah-fakultas-syariah>). Thus, Islamic law in society was the limelight of the establishment of the university. The Faculty of Islamic Law and Social Knowledge was gradually transformed into Raden Fatah State Islamic Institute (IAIN) and finally into Raden Fatah State Islamic University (UIN) in 2014. Under the status of a state Islamic university, there are nine faculties. The faculties are the Faculty of Sharia and Law, Faculty of Tarbiyah and Education, Faculty of Ushuluddin and Islamic Thoughts, Faculty of *Adab* and Humanity, Faculty of Da'wah and Communication, Faculty of Economics and Business, Faculty of Social and Political Sciences, and Faculty of Psychology. At the Faculty of Sharia and Law, at the time of research, "the law" was only given in the master's program. The Faculty of Sharia and Law has five study programs: Family Law, Comparative of Criminal Law, Economics Law, and State Administrative Law. In addition, the faculty has four laboratories, viz., a lab of Islamic law, consultation and legal aid, astronomy, and a mini bank (sumsel.tribunnews.com/2019/12/29).

The Family Law program is the oldest study program on the faculty. The vision of this study program is to lead in the field of family law with international standards, combined with national insights and Islamic character in Southeast Asia in 2025". This vision is implemented in missions, *inter alia*: holding education and teaching in the field of family law with international standard curriculum, developing quality research in the field of family law, and developing a model of community service in the field of family law in the framework of solving local, regional, and international problems. The faculty's missions suit the society's needs in South Sumatra.

The inheritance problems for women in South Sumatra are local. However, they can also be regional and international as shown by studies on women and inheritance, such as Ababsa (2017), Irianto (2012),

Kunreuther (2009). Bowen (2003), Philips (2003), Griffiths (2002), and Cummings, van Dam, Khadar, and Valk (2001). The issues of injustice women experience in accessing inheritance rights are local, regional, and international, as indicated by CEDAW, MDGs, and SDGs. Therefore, actual inheritance for women is in line with the vision of the Family Law study program.

Subjects taught at the Faculty of Sharia and Law that related to inheritance are *fiqh al-mawāriṭh* I and advanced *fiqh al-mawāriṭh* (Islamic Inheritance Law), *Fiqih Kontemporer* (Contemporary Islamic Law), and *masā'il al-fiqhiyyah* (Issues on Islamic Law). As for the knowledge of customary inheritance law, it is the subject of Customary Law. However, since the legal science study program has not been opened, customary law is not prioritized. Thus, the curriculum and subjects discussing customary inheritance for women are not in the limelight, adding that not many people comprehend the complexity of Islamic inheritance law. If the subject of community service is a program in which students and lecturers can empower society, such as by socializing Islamic inheritance law, students and lecturers seldom bring these inheritance issues to community services (Dean, 2020).

Academic journals discuss inheritance issues in *Nurani: Jurnal Kajian Syariah dan Masyarakat*, published biannually. A content analysis of the journal found that throughout its publications (2013-2023), only seven articles contained inheritance, three on customs, and three on gender. The seven articles on inheritance are described as follows: one article in vol. 22 No.1 (2022), one article in vol. 21 No. 2 (2021), two articles in vol. 20 No. 2 (2020), one article in vol. 20 No. 1 (2020), two articles in vol 17 No. 1 (2017), and one article in vol. 14 No. 2 (2014). Most articles are normative; one is philosophical, and the other is empirical research. Among the seven articles on inheritance, only three are written by internal authors, and the other four are written by external authors. The articles on customs are about 'urf (in vol. 14 No. 2, 2014), customary land (in vol. 21 No. 1, 2021), and adopted children (in vol. 17 No. 1, 2017), which is familiar in South Sumatra. The issue of gender in Islamic texts exists in vol 13 No. 2 (2013), and gender issues concerning the law are available in vol. 19 No. 1 (2019) and vol. 20 No. 1 (2020). Overall, the issues of inheritance law are discussed more at Raden Fatah State Islamic University than at the University of Sriwijaya.

Personally, the deans of Law Faculties at Sriwijaya University and UIN Raden Fatah believe that laws have given inheritance rights to women. Laws have placed women as heirs. Islamic law is more rigid and fixed about women's inheritance shares, and customary laws have wisdom. Institutionally, the views of both faculties can be seen in the faculties' curriculums, academic journals, and community services as described in the Journal of Community Service.

Legal education on women's inheritance rights needs institutional views, attitudes, and behaviors instead of personal views and attitudes. Since the potential of universities in social change is not exerted optimally, inheritance injustice cases are still many in society and unsolved. Both universities need to maximize their potential as agents of social change. The universities need to reflect their curriculum, training, journals, and community services and link them to local problems. Through this reflection, the university is a place for society to ask for solutions to their problems and a capital for social development.

Conclusion

From previous discussion, the study concludes that the State through the legislative body and the Supreme Court have attempted to give women inheritance rights as contained in laws and verdicts. As Indonesia adopts positive law originating from the European continent, Indonesian courts refer to acts issued by the legislative body.

Although university has the potential for social transformation by disseminating ideas and exerting influence on society, the largest state universities in South Sumatra have not paid much attention to injustice in customary inheritance law. Attention to inheritance law is only given in classroom teachings, but very little in research, publication, and community services. Only in Raden Fatah State Islamic University are inheritance issues discussed, but in ten years publication only seven articles contained inheritance, three articles on customs, and three articles on gender. A survey to *Sriwijaya Law Review*, a Sriwijaya University's Q3 scopus indexed journal, through out the publications (from 2020 to 2023), there are only three articles on indigenous law and two on gender, and none on inheritance. The articles are written by external academia, not by Sriwijaya University academia. The lack of discussion on the issues of inheritance for women means that the university has

not given sufficient attention to legal education on women inheritance or has no sense of gender mainstreaming.

Universities need to reflect their curriculum, training, journals, and community services and link them to local problems. Through this reflection, the university is a place for society to ask for solutions to their problems and a capital for social development. Finally, a university can lead to knowledge-driven social development instead of being led by societal changes.

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