

Women's Inheritance Rights in a Patrilineal Customary System: A Juridical Analysis of Supreme Court Decision Number 1130 K/Pdt/2017

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Received: 26 May 2026

Accepted: 26 August 2026

Published: 28 August 2026

Abstrak

Putusan Mahkamah Agung Nomor 1130 K/Pdt/2017 menjadi titik penting dalam penyelesaian ketegangan antara hukum adat patrilineal masyarakat Manggarai dan prinsip kesetaraan dalam hukum nasional Indonesia. Penelitian ini bertujuan menganalisis kedudukan hukum adat patrilineal dalam sistem hukum nasional, hak waris perempuan dalam perspektif yurisprudensi dan hak asasi manusia, serta pertimbangan hakim dalam mengoreksi diskriminasi berbasis adat. Metode yang digunakan adalah yuridis normatif dengan pendekatan perundang-undangan, pendekatan kasus, dan pendekatan konseptual. Bahan hukum primer meliputi Putusan Mahkamah Agung Nomor 1130 K/Pdt/2017, UUD 1945, Undang-Undang Nomor 39 Tahun 1999 tentang HAM, serta yurisprudensi terkait, sedangkan bahan hukum sekunder terdiri dari literatur hukum, jurnal ilmiah dan buku. Teknik pengumpulan data dilakukan melalui studi kepustakaan, dan analisis data menggunakan interpretasi hukum serta argumentasi hukum. Hasil penelitian menunjukkan bahwa hukum adat patrilineal yang tidak mengakui hak waris perempuan dinilai bertentangan dengan Pasal 27 UUD 1945 dan Undang-Undang Nomor 39 Tahun 1999 tentang HAM. Mahkamah Agung secara konsisten melanjutkan yurisprudensi sejak Putusan Nomor 179 K/SIP/1961 yang menyamakan hak waris perempuan dan laki-laki. Penelitian ini bukan yang pertama, tetapi memberi kontribusi analitis dengan membaca putusan sebagai titik temu tiga operasi hukum kesetaraan konstitusional, pengakuan bersyarat Pasal 18B ayat (2), dan otoritas yurisprudensi MA serta memisahkan ketiganya secara argumentatif.

Kata kunci: hak waris perempuan, adat patrilineal, kesetaraan gender

Abstract

Supreme Court Decision Number 1130 K/Pdt/2017 represents an important point in resolving the tension between the patrilineal customary law of the Manggarai community and the principle of equality in Indonesian national law. This study aims to analyse the position of patrilineal customary law within the national legal system, women's inheritance rights from the perspectives of jurisprudence and human rights, and the judges' reasoning in correcting custom-based discrimination. The method employed is normative juridical research using statutory, case, and conceptual approaches. Primary legal materials comprise Supreme Court Decision Number 1130 K/Pdt/2017, the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, and related jurisprudence, while secondary legal materials consist of legal

literature, scholarly journals, and books. Data were collected through library research, and analysed using legal interpretation and legal argumentation. The findings show that patrilineal customary law which does not recognise women's inheritance rights is deemed contrary to Article 27 of the 1945 Constitution and to Law Number 39 of 1999 concerning Human Rights. The Supreme Court has consistently continued the jurisprudence established since Decision Number 179 K/SIP/1961, which equated the inheritance rights of women and men. This study is not the first of its kind, but it offers an analytical contribution by reading the decision as a point at which three legal operations converge constitutional equality, the conditional recognition afforded by Article 18B paragraph (2), and the authority of Supreme Court jurisprudence and by separating the three in argumentative terms.

Keywords: *women's inheritance rights, patrilineal customary law, gender equality*

INTRODUCTION

The central issue in Supreme Court Decision Number 1130 K/Pdt/2017 arises from the denial of women's inheritance rights on the basis of the patrilineal customary law of the Manggarai community. A patrilineal kinship system is a pattern of family relations that traces descent through the father, that is, through the male line. Within this system, the distribution of the estate is focused on sons as the principal continuators of the family line, with the result that sons tend to be given priority over daughters.¹ In the present case, the daughters, as heirs, were regarded as having no entitlement to their parents' estate, because the customary system positions men as the sole continuators of the lineage and the sole holders of inheritance rights. Two concepts are relevant here: structural function, which concerns institutional roles, and legal culture, which concerns the values and behaviour of society within the legal system.

At the normative and conceptual level, the protection of the rights of customary law communities (*Masyarakat Hukum Adat*, MHA) has obtained constitutional guarantees through Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Recognition of and respect for the existence of customary law community units are further reinforced by various sectoral regulations, among them Law Number 5 of 1960 concerning Basic Agrarian Principles, Law Number 4 of 2009 concerning Mineral and Coal Mining, Law Number 7 of 2004 concerning Water Resources, and a number of other related statutes, which collectively seek to realise state recognition of customary communities together with their traditional rights.² To portray a customary inheritance dispute as a conflict between traditional law and constitutional equality is an oversimplification, because it merges the judge's obligation to apply the guarantee of equality in a civil dispute with the constitutional recognition of customary law communities; the validity of a customary norm is therefore not automatically aligned with the principle of equality.

¹ Fathiya Nur Rosyida and Karina Shofi Sabitha Ramadhani, "Sistem Patrilineal Pada Hukum Waris Adat Masyarakat Batak," *Jurnal Begawan Hukum* (JBH) 2, no. 1 (2024): 13–22.

² S H Jawahir Thontowi, "Pengaturan Masyarakat Hukum Adat Dan Implementasi Perlindungan Hak-Hak Tradisionalnya," *Pandecta: Research Law Journal*, 2015

Systems of blood relations and kinship differ from one ethnic group to another in Indonesia.³ The patrilineal kinship system of the Manggarai community, for instance, draws a firm distinction between the positions of sons and daughters. Sons are regarded as “insiders” (*ata one*) who hold full rights over the estate, whereas daughters are considered “outsiders” (*ata pe'ang*) who hold no inheritance rights because they leave the family upon marriage. This situation reflects a social construction that systematically restricts women's access to economic rights within the family. The patrilineal kinship system places the male line at the foundation of the family structure, and in the practice of dividing an estate it not infrequently gives rise to disputes among family members.⁴

Customary law displays a diversity of rules shaped by the kinship system adhered to by a given community. In patrilineal societies, which trace descent through the father, men tend to occupy a more dominant position than women, particularly in matters of inheritance.⁵ A legal conflict arises when a daughter who factually controls the disputed property is nonetheless regarded as lacking legal legitimacy under customary law. The plaintiffs argued that, according to customary law, the entire estate should belong to the sons, so that possession by a daughter must be declared unlawful and the property transferred to the male heirs. This dispute reveals a tension between customary norms and evolving social realities.

As cited by Lestawi, Soepomo stated that customary inheritance law contains provisions governing the manner in which rights over property, both tangible and intangible, are transmitted and transferred from one generation to its descendants.⁶ The literature on gender within customary orders documents a set of historically constructed oppositions employed to rationalise the denial of such rights: strength against weakness, reason against emotion, activity against passivity. Gender stereotypes remain strongly felt and affect various aspects of life. This is evident in patterns of childrearing and education that differentiate roles according to sex. From an early age, daughters are guided toward domestic affairs and ceremonial duties, whereas sons are prepared to occupy positions of leadership and to take part in decision-making processes.⁷

Within the patrilineal paradigm, women are perceived as the opposite of men: men are regarded as strong while women are weak, men as rational and women as emotional, and men as active while women are positioned as passive.⁸ The Supreme Court, by contrast, has affirmed in its various rulings that women hold a position equal to that of men in matters of inheritance. This principle has indeed constituted

³ Karwiyah Karwiyah, Bambang Daru Nugroho, and Hazar Kusmayanti, “Dinamika Hukum Perkawinan Adat Pada Sistem Kekerabatan Parental/Bilateral Terhadap Masyarakat Sunda,” *Recital Review* 6, no. 1 (2024): 52–73.

⁴ *Ibid*

⁵ Nabila Nariswari, Artaji Artaji, and Betty Rubiati, “Penyelesaian Sengketa Harta Warisan Yang Belum Terbagi Antara Para Ahli Waris Terkait Dengan Pilihan Hukum Pada Masyarakat Adat Patrilineal,” *Hakim: Jurnal Ilmu Hukum Dan Sosial* 1, no. 3 (2023): 76–89.

⁶ I Wayan Ferry Suryanata, “Hukum Waris Adat Bali Dalam Pandangan Kesetaraan Gender,” *Belom Bahadat* 11, no. 2 (2021): 46–64.

⁷ Nabila Zatadini, Adinda Akhsanal Viqria, and Muhamad Galib Iqbal, “Perempuan Dan Hukum Dalam Pandangan Masyarakat Adat Lampung Pepadun: Kajian Perspektif Gender,” *Jurnal Hukum Legalita* 6, no. 2 (2024): 246.

⁸ Dinny Rahmayanty et al., “Ketidaksetaraan Gender Dalam Sistem Patrilineal,” *Innovative: Journal Of Social Science Research* 3, no. 5 (2023): 6513–22.

settled jurisprudence since Supreme Court Decision Number 179 K/SIP/1961, which equated the inheritance rights of women and men. Grounding its reasoning in the principles of justice, humanity, and equality between men and women, the Supreme Court has affirmed that women must be recognised as legitimate heirs. They are accordingly entitled to obtain a share of their parents' estate in accordance with their position.⁹

Furthermore, customary law is not static but dynamic, and it may change in step with the development of society and with values of justice. Soepomo maintained that customary law is living law because it reflects the community's actual sense of justice. By its very nature, customary law continually grows and changes, following the dynamics of life itself.¹⁰ The present decision affirms that customary law which no longer accords with the principles of equality and justice, particularly law that does not recognise women's rights, cannot be maintained within the national legal system.

The study by Firza Fikri et al. examines the problems of the patrilineal customary inheritance system, which prioritises sons as principal heirs and therefore risks generating injustice for women as well as family conflict. This normative study finds that social norms, economic pressures, and shifting values among the younger generation complicate the process of inheritance and create tension between tradition and modernity. Examining three customary communities (Batak, Bali, and Timika), the article reveals a degree of latitude that allows women to obtain property through grants or gifts motivated by affection, even though they hold no status as heirs. It concludes that mediation and reform of the customary inheritance system are required, together with a reassessment of the rigid patrilineal system so that it aligns with the value of gender equality in modern society.¹¹

The study by Nathasya and Sulastris examines Medan High Court Decision Number 400/Pdt/2023/PT MDN, which awarded a share of 3/6 to the son and 1/6 to each of the three daughters in a Karo family. The judges took into account Karo customary law, transmitted across generations, while still accommodating gender justice through the concept of *keleng ate* (affection). The study concludes that the decision succeeded in harmonising customary law and civil law, producing justice without disregarding local cultural identity, and setting a precedent for other customary communities.¹²

The study by Sonny et al. identifies a shift in customary inheritance law among the Balinese, Batak, and Lampung communities, from a purely patrilineal system toward the recognition of inheritance rights for daughters and widows. This shift is attributed to religion, modernisation, urbanisation, and the increasing economic

⁹ Novita Sari and Sukri Hidayati, "Hak Waris Perempuan Dalam Adat Batak Pasca Berlakunya Yurisprudensi MA No. 03/Yur/Pdt/2018," *Journal of Law, Society, and Civilization* 10, no. 1 (2022): 58–59.

¹⁰ Lastuti Abubakar, "Revitalisasi Hukum Adat Sebagai Sumber Hukum Dalam Membangun Sistem Hukum Indonesia," *Jurnal Dinamika Hukum* 13, no. 2 (2013): 319–31.

¹¹ Firza Fikri Rabbani, Muhammad Ardan, and Kendra Kaulika Aliyah, "Problematisasi Pembagian Waris Adat Pada Kekerabatan Patrilineal," *Indonesian Journal of Social Sciences and Humanities* 4, no. 2 (2024): 42–49.

¹² Nathasya Irish Rachelninta and Sulastris Sulastris, "Implementasi Hak Waris Perempuan Dalam Masyarakat Adat Patrilineal," *Jurnal USM Law Review* 8, no. 1 (2025): 86–104.

role of women, with Supreme Court Decision Number 179/K/Sip/1961 serving as juridical evidence, even though it carries only the persuasive force of precedent. The study concludes that customary inheritance law is dynamic and pluralistic, so that shifts in norms do not occur uniformly across all patrilineal communities in Indonesia.¹³

The wholesale adoption of other legal systems in the formation of Indonesian legislation has in practice occasionally produced conflicts with the sense of justice that lives within society.¹⁴ Taken together, the preceding studies establish three findings. First, the denial of women's inheritance rights is widespread among patrilineal communities and frequently gives rise to disputes. Second, the shift in norms following Decision Number 179 K/SIP/1961 has been uneven, because that decision is merely persuasive in character. Third, accommodation of women is generally achieved through affection-based mechanisms grants, *keleng ate*, and *Widang* rather than through the recognition of rights. The doctrinal question that remains unanswered, however, concerns the constitutional basis and the criteria on which a court may decline to give effect to a customary inheritance rule that is still living, and whether the recognition that emerges constitutes a right or merely an act of generosity. Decision Number 1130 K/Pdt/2017 is relevant because it concerns a community in which the denial of rights is based on categories of membership (*ata one* and *ata pe'ang*) rather than on unequal shares, so that it cannot be corrected by adjusting the portions allocated. This study does not claim to be the first examination of the subject; rather, it offers an analytical contribution by reading that decision as a point at which three legal operations converge constitutional equality, the conditional recognition afforded by Article 18B paragraph (2), and the authority of Supreme Court jurisprudence and by separating the three in argumentative terms.

RESEARCH METHOD

In legal research, one applicable method is the normative juridical approach, which is among the most commonly used and relatively straightforward to apply. Accordingly, this study is doctrinal (normative juridical) legal research employing statutory, case, and conceptual approaches, designed to answer three research questions analytically. Primary legal materials comprise Article 18B paragraph (2) of the 1945 Constitution, Law Number 39 of 1999 concerning Human Rights, and Supreme Court Decisions Number 1130 K/Pdt/2017 and Number 179 K/SIP/1961; secondary legal materials consist of books, journal articles, and legal doctrine. The compatibility of a customary norm with written law is assessed against the hierarchy of legislation established in Law Number 12 of 2011, applying the maxim *lex superior derogat legi inferiori*. Because customary law is unwritten and is not situated within that hierarchy, however, its position is determined through the recognition clause of Article 18B paragraph (2) read together with Article 28I paragraph (3), so that recognition is treated as a question logically prior to the question of conflict between norms. This study is doctrinal and involves no fieldwork; the ethnographic material concerning Manggarai kinship is drawn from

¹³ Sonny D Judiasih et al., "Pergeseran Norma Hukum Waris Pada Masyarakat Adat Patrilineal," *RechtIdee* 16, no. 1 (2021): 65–87.

¹⁴ *Ibid.*

secondary studies and is used to establish the content of the customary norm rather than to measure the extent of its observance. Statements concerning the community's response to the decision are therefore interpretive propositions derived from the literature rather than empirical findings.

RESULTS AND DISCUSSION

Kinship Structure and Its Influence on the Distribution of Inherited Property

The Manggarai people, who inhabit the western part of Flores Island in East Nusa Tenggara, are known for a distinctive social and cultural system centred on a strong principle of communal solidarity known as *gotong royong*. Their lives are governed by a clan-based kinship system (*wa'u*) and by traditions (*lalu*) transmitted across generations, in which every important decision is taken through customary deliberation. The *Mbaru Gendang* constitutes a complete representation of Manggarai culture, so that exploring the wisdom contained in its form and symbolism amounts to an effort to understand that culture as a whole. All of its aspects, from local wisdom and practical philosophy to the aesthetic beauty of Manggarai arts, are tangibly displayed in this traditional house.¹⁵ The distinctiveness that shapes the cultural identity of the Manggarai people is largely reflected in the structure and function of the *Mbaru Gendang* within their culture.¹⁶

Within their traditional belief system, the Manggarai people hold ancestral spirits and the forces of nature in high esteem. Animistic practices persist throughout Flores, and particularly in Manggarai. Within this framework of belief, ceremonies venerating ancestral spirits constitute the most important element of the entire complex of customary rituals. They believe that the spirits of the deceased play a highly significant role, and they also hold that life after death does not differ from life in this world but simply takes place in another realm.¹⁷ Manggarai culture on Flores likewise recognises a relationship between created beings and the Ultimate Reality (*Mori Kraeng*). This relationship is expressed concretely through the performance of rites in the form of sacred prayers.¹⁸

Indonesian customary law recognises three family systems patrilineal, matrilineal, and parental which render its inheritance law pluralistic. The patrilineal system traces descent through the father or through male ancestors.¹⁹ The customary inheritance system of the Manggarai people, moreover, rests on a firm and orderly kinship structure. In East Manggarai, specifically in Rana Mbata Village, the community applies a patrilineal system that grants men a central position as the principal continuators of the lineage. A consequence of this system is that sons (*ata one*) obtain primary inheritance rights, while daughters (*ata pe'ang*) hold no entitlement to family property. This follows from the tradition that a daughter will

¹⁵ Mathias Adon, "Menggali Konsep Filosofis Mbaru Gendang Sebagai Simbol Identitas Dan Pusat Kebudayaan Masyarakat Manggarai, Flores, Nusa Tenggara Timur," *Jurnal Masyarakat Dan Budaya* 24, no. 2 (2022): 231–51.

¹⁶ *Ibid.*

¹⁷ Yohana Fatima Hibur, Dewa Bagus Sanjaya, and I Gusti Ketut Arya Sunu, "Kepercayaan Masyarakat Terhadap Upacara Adat Teing Hang Bagi Para Leluhur Di Desa Golo, Kecamatan Cibal, Kabupaten Manggarai (Studi Kasus Di Desa Golo, Kecamatan Cibal, Kabupaten Manggarai)," *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 1 (2022): 58–70.

¹⁸ Filipus Sudarlin, "Torok, Doa Masyarakat Manggarai Tinjauan Teologis Dan Problem Inkulturasinya Dalam Perayaan Ekaristi," *Perspektif* 9, no. 1 (2014): 53–74.

¹⁹ *Ibid.*

move into her husband's clan after marriage.²⁰ Within this system, the central position is granted to the son, who from birth is designated *ata one*, a status as principal heir who will continue the lineage and manage the ancestral estate.

Under the system in force, sons (*ata one*) hold the status of principal heirs because they are regarded as the continuators of the family line. The responsibilities attached to them include maintaining the traditional house, caring for their parents, and managing all inherited family assets. Daughters (*ata pe'ang*), by contrast, are not given priority in inheritance, since according to customary provisions they will eventually join their husband's clan upon marriage.²¹ From birth, therefore, a daughter holds no automatic right to her family's estate, and her position within her father's household is accordingly regarded as temporary and unconnected to long-term customary obligations. Where a family is not blessed with a son, however, daughters are entitled to obtain the inheritance through a mechanism of deliberation and family agreement.²²

The division of an estate in Manggarai custom possesses a temporal flexibility that is not rigidly bound to the moment of the property owner's death. The division may be carried out while the owner is still alive, which allows him to witness directly the transfer of rights within his family. In practice, moreover, emotional closeness frequently becomes the primary reason for granting an inheritance to a daughter. A daughter who cares for her parents and lives with them is regarded as having a stronger claim to a portion of the estate. Her concrete contributions to running the household, managing the fields, and meeting the family's daily needs reinforce such decisions. Furthermore, some parents grant an inheritance because they consider that the value of justice need not always adhere rigidly and absolutely to customary provisions.²³

In addition, after marriage a daughter often receives something from her parents known as *Widang*. Such a gift, however, is not a consequence of her status as an heir but rather a form of parental compassion toward a daughter who is about to embark on married life. Under the customary law prevailing in Barang Village, *Widang* is defined as a transfer of inherited property from parents to a daughter that functions as a token of their affection.²⁴ For the Manggarai people, land and inherited property are not merely inanimate objects; they possess a sacred spiritual dimension. Every process of opening new land, determining the central point of the *lodok*, and harvesting the produce of the earth is accompanied by a series of customary rituals. At the central point of the *lodok*, for instance, special prayers are offered for the fertility of the soil and the safety of the harvest, and as a form of homage to the Creator and to ancestral spirits.

²⁰ Maria Dionisia Babut, Yohanes Arman, and Stefanus Don Rade, "Kedudukan Perempuan Dalam Sistem Pewarisan Masyarakat Adat Rana Mbata Kabupaten Manggarai Timur," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 4, no. 1 (2026): 1542–50.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*, hlm. 1547.

²⁴ Selviana Jima, Ketut Sudiatmaka, and Ni Ketut Sari Adnyani, "Pembagian Harta Waris Menurut Perspektif Hukum Waris Adat Terhadap Anak Laki-Laki Dan Perempuan (Studi Kasus Pada Masyarakat Di Desa Barang, Kecamatan Cibal, Kabupaten Manggarai)," *Jurnal Komunitas Yustisia* 5, no. 1 (2022): 139–46.

The Position of Patrilineal Customary Law within the National Legal System

As a state based on law, Indonesia is characterised by a diverse society. A state based on law emphasises legal certainty, in which law functions as an instrument that provides clear limits and a clear scope for every legal subject.²⁵ This plurality entails that the state must regulate various aspects of social life through legislation as a legal product. The term “plural society” corresponds to the concept of a plural or pluralistic society, which describes diversity in social life.²⁶ The position of patrilineal customary law within Indonesia’s national legal system is in principle recognised as part of the *living law* that grows and develops within society.

According to Bertrand ter Haar, customary inheritance law is understood as the process of transmitting and transferring property, both tangible and intangible, from one generation to the next. Wirjono Prodjodikoro, for his part, explains that Indonesian customary societies encompass various kinship systems, one of which is the patrilineal system, which emphasises descent through the father’s family.²⁷ This recognition is reflected in various legislative provisions that allow customary law to remain in force so long as it continues to live and accords with the development of society. Such recognition, however, is not absolute; it is limited by higher national legal principles, including the Constitution and evolving values of justice.

In the context of Manggarai society, the patrilineal kinship system positions men as the principal continuators of the lineage and, at the same time, as the holders of inheritance rights. A patrilineal kinship system is a pattern of family relations based on descent through the father or the male line. In its application, this system places men at the centre of inheritance, so that women, whether as daughters or as widows, generally obtain no share of the estate.²⁸ As a consequence, women are frequently excluded from the circle of heirs because they are considered to have become part of another family upon marriage.

Juridically, the validity of customary law must be tested against the principles of consistency with legislation, propriety, and the community’s sense of justice. This means that even where a customary norm is still practised, its validity may be set aside if it contains an element of discrimination or disproportionately disadvantages a particular party, since the application of customary law in Indonesia is recognised under Article 18B paragraph (2) of the 1945 Constitution only so long as it remains living, accords with development, and does not conflict with the principles of the Unitary State of the Republic of Indonesia.²⁹ Customary law, as the principal force protecting customary territories, thus frequently occupies a weaker position than state law. This is because state law tends to rely on written rules, formal evidence, and validation by authorised officials in determining the legitimacy of customary

²⁵ Made Hendra Wijaya, “Karakteristik Konsep Negara Hukum Pancasila,” *Jurnal Advokasi* 5, no. 2 (2015): 29382.

²⁶ Adventi Ferawati Sembiring, “Kedudukan Perempuan Dalam Hukum Waris Adat Pada Sistem Kekerabatan Patrilineal Di Lau Pakam, Kecamatan Mardingding, Kabupaten Karo, Provinsi Sumatra Utara,” *Jurnal Ilmiah Hukum Dan Dinamika Masyarakat* 15, no. 2 (2018).

²⁷ Abdiilah Sulfany and Fitra Abduna Jalesvevano, “Analisis Hukum Terkait Sistem Waris Patrilineal Adat Batak Di Indonesia,” *Indonesian Journal of Social Sciences and Humanities* 3, no. 2 (2023): 12–19.

²⁸ Sovia Santika and Yusnita Eva, “Kewarisan Dalam Sistem Kekerabatan Matrilineal, Patrilineal Dan Bilateral,” *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 11, no. 02 (2023).

²⁹ *Ibid.*, hlm. 66.

law communities and their legal systems.³⁰ The practice of barring women from inheritance is therefore relevant for examination, since it potentially conflicts with the principle of non-discrimination.

More broadly, Indonesia's national legal system places the Constitution as the highest source of law, guaranteeing the equal standing of every citizen before the law. Accordingly, all norms, including customary law, must submit to that principle. Where patrilineal customary law generates injustice for women, the state, through its judicial institutions, has the authority to make corrections in order to guarantee the protection of human rights. Customary law itself was initially regarded as alien, and at the time TAP MPRS Number 11 of 1960 and Supreme Court Decision Number 179 K/SIP/1961 were issued, it had to submit to the system prevailing under customary law, namely the patrilineal kinship or family system, which left the position of women within both the household and society immobile and weak.³¹

The existence of customary communities in Indonesia receives constitutional recognition in the 1945 Constitution as amended for the fourth time, particularly in Article 18B paragraph (2). That provision affirms that the state recognises and respects customary community units together with their traditional rights, so long as they remain in existence, accord with the development of society, and do not conflict with the principles of the Unitary State of the Republic of Indonesia, with further arrangements to be determined by statute.³² Article 18B paragraph (2) governs the state's recognition of and respect for customary law community units together with their traditional rights, on the condition that such recognition is granted only where four cumulative requirements are satisfied: (i) the customary law community unit concerned is genuinely still living; (ii) its existence accords with the development of society; (iii) it does not conflict with the principles of the Unitary State of the Republic of Indonesia; and (iv) it is further regulated by statute. Constitutional recognition of customary law communities is therefore not absolute but depends on the cumulative fulfilment of all these conditions.³³

Judicial Reasoning and the Role of the Supreme Court in Correcting Custom Based Discrimination

In procedural law, both civil and criminal, the adversarial principle requires the court to afford the parties an equal opportunity to submit their contentions, evidence, and legal arguments. The right to be heard is a precondition for achieving equality of arms between the parties, and serves to prevent detriment arising from unilateral action by law enforcement officers.³⁴ The procedural posture of a case must be stated at the outset, because it determines the limits of what a decision can establish. Cassation is a review of the application of law rather than of the facts, so

³⁰ Sulaiman Sulaiman, Muhammad Adli, and Teuku Muttaqin Mansur, "Ketidakteraturan Hukum Pengakuan Dan Perlindungan Masyarakat Hukum Adat Di Indonesia," *Law Reform* 15, no. 1 (2019): 12-24.

³¹ *Ibid.*

³² *Ibid.*

³³ Ni Luh Ariningsih Sari, "Pengaruh Dan Perlindungan Hukum Terhadap Masyarakat Hukum Adat (Dalam Perspektif Negara Hukum)," *Jurnal Unmasmataram* 14, no. 1 (March 2020): 440.

³⁴ M Aslam Fadli, "Status Hukum Para Pihak, Legal Standing, Due Process, Kewenangan Institusional Pengadilan, Dan Perlindungan Hak Prosedural," *Jurnal Ilmu Hukum* 1, no. 2 (2025): 56-67.

that the Supreme Court assesses the authority of the court below, its application of the law, or the formal requirements of its judgment. Once the parties, the object of the dispute, and the operative orders of the District Court and the High Court have been identified, an application for cassation is lodged on specified grounds, and the Supreme Court issues an order either allowing or rejecting it.

The judges' reasoning in Supreme Court Decision Number 1130 K/Pdt/2017 shows that the case originates in a conflict between Manggarai patrilineal customary norms and the principle of equality in national law. In that customary practice, only sons are recognised as heirs, while women are placed outside the structure of inheritance. The judges, however, did not simply accept this customary construction; rather, they examined it within a broader legal framework, including the Constitution and legislation. As officers of the state, judges occupy a strategic role in realising the principle of the rule of law. One form of obedience to the law in Indonesia is respect for, and the upholding of, the fundamental rights of every individual.³⁵

Because Indonesia does not adhere to the doctrine of *stare decisis*, a judgment binds only the parties and does not create a rule binding on other courts. The authority of Decision Number 179 K/SIP/1961 is persuasive, resting on the consistency of a series of decisions, on the institutional authority of the Supreme Court exercised through the publication of jurisprudence and circulars, and on the function of legal certainty. Decision Number 1130 K/Pdt/2017 is accordingly described more accurately as evidence of a consistent judicial interpretation than as binding precedent; the term "settled jurisprudence" is used here in its Indonesian sense rather than in the common law sense of a binding rule. With respect to legal certainty, the Supreme Court grounded its reasoning in well-established jurisprudence. It expressly stated that, since Decision Number 179 K/SIP/1961, the Supreme Court has consistently recognised the equality of inheritance rights between men and women. This is consistent with the Constitution. Article 17 of Law Number 39 of 1999 concerning Human Rights essentially provides that every person, without discrimination, has the right to obtain justice through a legal process that is fair, objective, honest, and correct.³⁶

Customary inheritance law is dynamic in its development, and customary law (including customary inheritance law) that no longer accords with legal developments and with the sense of justice within the Unitary State of the Republic of Indonesia, including customary law that does not recognise the rights of women, cannot be maintained.³⁷ In terms of justice, the judges' reasoning was not merely formal but also substantive. The Supreme Court held that customary law which does not recognise women's rights conflicts with the development of society and with the sense of justice. Roscoe Pound, for his part, located justice in the concrete results that law is able to deliver to society.³⁸ It was therefore affirmed that discriminatory customary law can no longer be maintained. This approach shows that the judges

³⁵ Andi Arifin, "Peran Hakim Dalam Mewujudkan Negara Hukum Indonesia," *IJOLARES: Indonesian Journal of Law Research* 1, no. 1 (2023): 6–10.

³⁶ Putusan Nomor 1130 K/Pdt/2017.

³⁷ Putusan Nomor 1130 K/Pdt/2017.

³⁸ Rizky Karo Karo, "Interpretasi Hakim Dan Rasa Keadilan Masyarakat," *Jurnal Yudisial* 16, no. 3 (2023): 310–24.

did not merely enforce norms but also weighed the values of justice that live within modern society.

Furthermore, with respect to the utility of law, the decision produces a broader impact on society. By recognising women's inheritance rights, the Supreme Court not only resolved a concrete dispute but also prevented similar injustices from arising in the future. The decision serves as a guideline for lower courts in handling comparable cases, thereby generating the benefit of more evenly distributed legal protection for all citizens, and for women in particular. Judges do not act merely as implementers of the law who apply rules through syllogistic reasoning (as the mouthpiece of the statute); they also function as interpreters and discoverers of law (*judge law finding*), and even participate in forming law (*judge made law*) on the basis of justice and prudence.³⁹

The role of the Supreme Court as the guardian of the supremacy of law is also clearly visible in this decision. The principle of the supremacy of law emphasises not only obedience to positive law but also the values of justice, legal certainty, and the protection of human rights.⁴⁰ The Supreme Court affirmed that the recognition of customary law is limited, extending only so far as it does not conflict with the Constitution and with the principles of a state based on law. In this way, the Supreme Court exercises a corrective function over customary practices that are inconsistent with the fundamental values of national law, particularly the principle of equality before the law.

In addition, the judges' reasoning demonstrates an integration of national law with human rights principles. The decision affirms that everyone is entitled to obtain justice without discrimination, as provided in Law Number 39 of 1999 concerning Human Rights. This shows that the approach adopted is not only normative but also grounded in the protection of citizens' fundamental rights. One important dimension of the implementation of the supremacy of law in Indonesia is the guarantee of human rights. Since the amendment of the 1945 Constitution, the protection of human rights has been strengthened constitutionally through Chapter XA (Articles 28A to 28J), which encompasses a range of rights in the civil, political, economic, social, and cultural fields.⁴¹

A strong body of law can function as an effective mechanism of social control that prevents violations even before law enforcement is set in motion.⁴² Supreme Court Decision Number 1130 K/Pdt/2017 may therefore be understood as an application of progressive law within Indonesia's judicial system. The judges were not rigidly bound by customary norms but were prepared to make a legal breakthrough in order to realise substantive justice. The decision not only settles a concrete dispute but also charts a direction for the reform of customary law so that it aligns more closely with the principles of equality, justice, and the protection of human rights in Indonesia as a state based on law.

³⁹ *Ibid.*

⁴⁰ Moody Rizqy Syailendra, Joel Natanael, and Michelle Heydee Kurniawan, "Peran Konstitusi Dalam Menjaga Prinsip Demokrasi Dan Supremasi Hukum Di Indonesia," *Multilingual: Journal of Universal Studies* 4, no. 4 (2024): 250–64.

⁴¹ *Ibid.*

⁴² Haekal Amalin Firdany Putra et al., "Membangun Budaya Hukum Yang Kuat Untuk Mendukung Supremasi Hukum," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 2 (2025): 983–90.

A Structural-Functional Analysis of the Manggarai Patrilineal System

In procedural law, both civil and criminal, the adversarial principle requires the court to afford the parties an equal opportunity to submit their contentions, evidence, and legal arguments. The right to be heard is a precondition for achieving equality of arms between the parties, and serves to prevent detriment arising from unilateral action by law enforcement officers.⁴³ The procedural posture of a case must be stated at the outset, because it determines the limits of what a decision can establish. Cassation is a review of the application of law rather than of the facts, so that the Supreme Court assesses the authority of the court below, its application of the law, or the formal requirements of its judgment. Once the parties, the object of the dispute, and the operative orders of the District Court and the High Court have been identified, an application for cassation is lodged on specified grounds, and the Supreme Court issues an order either allowing or rejecting it.

The judges' reasoning in Supreme Court Decision Number 1130 K/Pdt/2017 shows that the case originates in a conflict between Manggarai patrilineal customary norms and the principle of equality in national law. In that customary practice, only sons are recognised as heirs, while women are placed outside the structure of inheritance. The judges, however, did not simply accept this customary construction; rather, they examined it within a broader legal framework, including the Constitution and legislation. As officers of the state, judges occupy a strategic role in realising the principle of the rule of law. One form of obedience to the law in Indonesia is respect for, and the upholding of, the fundamental rights of every individual.⁴⁴

Because Indonesia does not adhere to the doctrine of *stare decisis*, a judgment binds only the parties and does not create a rule binding on other courts. The authority of Decision Number 179 K/SIP/1961 is persuasive, resting on the consistency of a series of decisions, on the institutional authority of the Supreme Court exercised through the publication of jurisprudence and circulars, and on the function of legal certainty. Decision Number 1130 K/Pdt/2017 is accordingly described more accurately as evidence of a consistent judicial interpretation than as binding precedent; the term "settled jurisprudence" is used here in its Indonesian sense rather than in the common law sense of a binding rule. With respect to legal certainty, the Supreme Court grounded its reasoning in well-established jurisprudence. It expressly stated that, since Decision Number 179 K/SIP/1961, the Supreme Court has consistently recognised the equality of inheritance rights between men and women. This is consistent with the Constitution. Article 17 of Law Number 39 of 1999 concerning Human Rights essentially provides that every person, without discrimination, has the right to obtain justice through a legal process that is fair, objective, honest, and correct.⁴⁵

Customary inheritance law is dynamic in its development, and customary law (including customary inheritance law) that no longer accords with legal

⁴³ M Aslam Fadli, "Status Hukum Para Pihak, Legal Standing, Due Process, Kewenangan Institusional Pengadilan, Dan Perlindungan Hak Prosedural," *Jurnal Ilmu Hukum* 1, no. 2 (2025): 56–67.

⁴⁴ Andi Arifin, "Peran Hakim Dalam Mewujudkan Negara Hukum Indonesia," *IJOLARES: Indonesian Journal of Law Research* 1, no. 1 (2023): 6–10.

⁴⁵ Putusan Nomor 1130 K/Pdt/2017.

developments and with the sense of justice within the Unitary State of the Republic of Indonesia, including customary law that does not recognise the rights of women, cannot be maintained.⁴⁶ In terms of justice, the judges' reasoning was not merely formal but also substantive. The Supreme Court held that customary law which does not recognise women's rights conflicts with the development of society and with the sense of justice. Roscoe Pound, for his part, located justice in the concrete results that law is able to deliver to society.⁴⁷ It was therefore affirmed that discriminatory customary law can no longer be maintained. This approach shows that the judges did not merely enforce norms but also weighed the values of justice that live within modern society.

Furthermore, with respect to the utility of law, the decision produces a broader impact on society. By recognising women's inheritance rights, the Supreme Court not only resolved a concrete dispute but also prevented similar injustices from arising in the future. The decision serves as a guideline for lower courts in handling comparable cases, thereby generating the benefit of more evenly distributed legal protection for all citizens, and for women in particular. Judges do not act merely as implementers of the law who apply rules through syllogistic reasoning (as the mouthpiece of the statute); they also function as interpreters and discoverers of law (*judge law finding*), and even participate in forming law (*judge made law*) on the basis of justice and prudence.⁴⁸

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⁴⁶ Putusan Nomor 1130 K/Pdt/2017.

⁴⁷ Rizky Karo Karo, "Interpretasi Hakim Dan Rasa Keadilan Masyarakat," *Jurnal Yudisial* 16, no. 3 (2023): 310–24.

⁴⁸ *Ibid.*

⁴⁹ Moody Rizqy Syailendra, Joel Natanael, and Michelle Heydee Kurniawan, "Peran Konstitusi Dalam Menjaga Prinsip Demokrasi Dan Supremasi Hukum Di Indonesia," *Multilingual: Journal of Universal Studies* 4, no. 4 (2024): 250–64.

⁵⁰ *Ibid.*

A strong body of law can function as an effective mechanism of social control that prevents violations even before law enforcement is set in motion.⁵¹ Supreme Court Decision Number 1130 K/Pdt/2017 may therefore be understood as an application of progressive law within Indonesia's judicial system. The judges were not rigidly bound by customary norms but were prepared to make a legal breakthrough in order to realise substantive justice. The decision not only settles a concrete dispute but also charts a direction for the reform of customary law so that it aligns more closely with the principles of equality, justice, and the protection of human rights in Indonesia as a state based on law.

CONCLUSION

Decision Number 1130 K/Pdt/2017 affirms two propositions: that customary inheritance law is dynamic, so that a rule which does not recognise women's rights cannot be maintained; and that the right to justice without discrimination is guaranteed under Article 17 of Law Number 39 of 1999. The decision resolves the dispute between the parties, but it does not invalidate the customary rule as a whole and does not constitute a review of constitutionality. Its authority is persuasive rather than binding, consistent with an Indonesian legal system that does not adhere to *stare decisis*.

This study concludes that the Court's formulation is best understood through Article 18B paragraph (2) of the 1945 Constitution, which affords conditional recognition to customary law. A rule that denies inheritance rights over individual property altogether does not satisfy those conditions, because the community's own practice has departed from it through deliberation and through distribution during the owner's lifetime, while the compensating mechanism (*Widang*) is a gift of affection rather than a claimable right. That rule therefore falls outside the scope of constitutional recognition, without any need to say that it has been defeated by the Constitution, and the communal core of the customary system remains intact.

Three practical implications are offered as recommendations. First, for lower courts, the decision constitutes persuasive guidance consistent with the jurisprudential line established since 1961 rather than binding precedent, so that any departure from it must be accompanied by reasons. Second, for customary communities, the durability of equal division depends on the transfer of custodial and caregiving obligations, which is more likely to be achieved through deliberation. Third, for future research, the effect of the decision on inheritance practice in Manggarai remains an open empirical question requiring further field study.

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⁵¹ Haekal Amalin Firdany Putra et al., "Membangun Budaya Hukum Yang Kuat Untuk Mendukung Supremasi Hukum," *Al-Zayn: Jurnal Ilmu Sosial & Hukum* 3, no. 2 (2025): 983–90.

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