

# COMPETITION AND INTERACTION BETWEEN STATE LAW AND CUSTOMARY LAW IN THE COURT ROOM: A STUDY OF INHERITANCE CASES IN INDONESIA<sup>1</sup>

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The aim of this study is to explain in the context of a district of Indonesia competition and interpenetration among a number of legal systems, as demonstrated by litigation in the courtroom. A pluralistic society with different ethnic groups, races, religions and classes, has given rise to various overlapping legal institutions. When conflicts involving many parties escalate, institutional conflict may also arise. This phenomenon is reflected primarily by trouble cases, processed in state courts. The parties engaged in disputes are confronted with various normative systems. Each initially adopts a certain institution in pursuing their own interest and endeavoring to win the game.

Indonesia does not yet have a codified system of inheritance law, but this does not mean that there is a vacuum in this field of law. In daily practice inheritance cases are decided by a number of normative legal systems derived from religion, custom (in Indonesia called *adat*), and other socially accepted systems. Legal systems of folk law, which do not come from the state, play important roles. Another form of

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law to which reference is made in settling inheritance disputes consists of court decisions, or judge-made law. Many precedents dealing with inheritance cases can be called upon by any member of a community in Indonesia, whether they belong to a matrilineal, a patrilineal, or a bilateral kinship system.

This study takes as its subject women of the Batak ethnic group, which originated in the southern part of the island of Sumatra and now consists of a number of subgroups such as the *Toba*, *Karo*, *Simalungun*, *Pak-Pak*, *Angkola*, and *Mandailing*. It aims to explain how Batak women have sought remedies within existing disputing processes for the problem, originally coming from customary law, that they have no entitlement to inherit. They are looking for a possible alternative legal institution which will be more favorable to women who belong to a patrilineal kinship system. The survival strategy of woman in choosing alternative legal institutions in disputing processes can also be seen as a form of resistance to patriarchy.

To examine this problem an analysis in terms of legal pluralism is used. Many legal pluralism approaches have been developed in legal anthropological study in the last 30 years. Recent thought in the field points out that it is difficult to consider legal pluralism simply as a mapping of the legal universe. It is claimed that a legal system cannot be seen simply as a clearly defined entity (Woodman 2002: 133). The boundaries between various legal systems are blurred, because often they are diffuse and contested, and change over time. Legal pluralism is characterized by great diversity in the systemic character of each of its components (K von Benda-Beckmann 2002: 1). This affects the way in which law should be considered. Law should be seen as consisting of clustered sections which provide cognitive, normative and institutional contexts for interaction (K von Benda-Beckmann 2002: 1).

The cases in the study each refer to an actor, a woman, who has become the subject of more than one legal system (Woodman 1996: 157, as quoted in Kleinhans and Macdonald 1997: 31). We shall see how women who become the subjects of more than one normative legal system in dispute processes, choose a particular legal institution to gain access to inheritance rights.

This legal pluralism phenomenon seems to us to refer to the case in which two legal systems are used in the same process and interact by competing with each other in a trial. Furthermore, in some contexts what happens within the interaction process is also an interpenetration or mixing of two legal systems. This occurs

when a judge, as a state representative, absorbs some part of what is viewed by him as customary law. He may exercise his authority to adjust his decisions to what he calls the changing customary law. What he means by this in the context is, law which is friendlier to women in that it gives them rights of inheritance equal to those of men.<sup>2</sup>

### Sources of Inheritance Law in Indonesia

The legal sources of inheritance law in Indonesia are of two kinds, written law, and unwritten law. The written law is scattered in several Acts, including the Marriage Act (no.1/1974), the Civil Code, and the Compilation of Islamic Law. The principles of the substantive law of inheritance contained in the Marriage Act can be found in two articles. Article 35 provides that “property acquired during the marriage becomes a joint property, owned by husband and wife together” . Article 36 states: “Husband or wife may use that joint property by mutual consent”.

The Civil Code was enacted in the colonial period, and adopted from the Dutch system of law. It divided the population of Indonesia into the three categories of Europeans, Foreign Orientals, and Natives (indigenous people). Foreign Orientals are Chinese, Arabs and Indians who come originally from some part of Asia. Chinese people are placed in two sub-categories: those who voluntarily obey the Civil Code, and those who practise their own customary law. No statute has repealed the Civil Code. In practice some people conform to it and others no longer utilize it. Natives who voluntarily adhere to the Civil Code are mostly Christians, but the category also includes any Indonesian citizen who declares that they will comply with the Civil Code. A person falls into the last category if they create a will providing who is to be their inheritor. Most Indonesian people are Moslem, and they tend to utilize the Compilation of Islamic Law rather than the Civil Code. This compilation therefore is another source of the written law of inheritance in Indonesia.

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<sup>2</sup> An important observation in this context is that, even though a judge represents the state, it is arguable that the judge’s decision need not be identified as state law. He might be better considered as an actor giving his own interpretation and exercising his own power in dealing with the case. This problem must be discussed elsewhere.

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Finally, court decisions or precedents declare portions of inheritance law. Many judicial decisions dealing with inheritance cases have been issued since 1960 by courts in all parts of the archipelago.

Unwritten law of inheritance can be found in most parts of *adat* law scattered among many cultural and ethnic groups. Such rules can be found also in agreements and social conventions created by people in settling inheritance cases. All of these are considered as law by ordinary people in practice, and their validity is in many contexts much stronger than state law in general.

### Subject of the Study

Four of the five case studies used in this article are gathered from documentary research. They concern Batak women who have experienced disputes over inheritance. The court documentation is from Batak local courts, and does not specify the sub-groups of the Batak people from which parties come. The cases could deal with Batak Toba, Batak Simalungun, Batak Karo, Batak PakPak or Batak Mandailing. All of the cases went to the Appellate Court in Medan, the capital city of North Sumatra Province, and the Supreme Court in Jakarta, the capital. As precedents the judges' decisions should be valid for all Indonesian citizens.

Two cases concern widows, and the other two cases daughters, the parties going to court for different reasons. One of the cases concerning a widow arose in Jakarta, and the other was initiated in the Court of First Instance in Pematang Siantar, North Tapanuli. The cases concerning daughters came from the Local Courts in Kabanjahe and Padang Sidempuan, North Tapanuli.

Widows and daughters went to court in disputes with their husbands, or relatives belonging to their father's brother's line. From this study it seems that widows suffer more from the process of litigation than daughters. This fact is related to the concept of a wife and her relationship with her husband and her husband's clan in Batak culture

The struggle of the widow to claim inheritance rights is worthy of study because of two types of unfairness. *First*, although in the city there is no basis for the patriarchal control exercised in rural areas, the old normative system is often adopted. The result is that a widow does not have a right to inherit her husband's

property which is also matrimonial property. The reasons for this and its implications need to be examined. *Second*, a widow who is divorced by her husband, or who was deserted by her deceased husband, will often have played an important role in the accumulation of wealth during their marriage. It seems unfair to neglect their claims on matrimonial property after the marriage has ended.

The cases are related to the problem that the validity of law depends on the context in which an issue arises (K von Benda-Beckmann 2001: 30). In practice the validity of customary law (or what is considered to be customary law) also extends to the urban areas to which Batak people have moved.

A further case has been gathered from empirical research. The data is about a widow who is 55 years old and living in Jakarta. This woman did not go to the state court, even though she experienced violence several times from her son. She even lost all her possessions and assets during the conflict period. From the description of the case we can see the reasons behind her reluctance to deal with the state court. But this did not mean that she had nothing to do with the state. She went to the state administration to pay off the taxes of her deceased husband soon after he died. Nor does it mean that she never had contact with a police officer in favorable situations. Her portrait represents those of many more women who hesitate to go to the state courts.

### The Position of Women in Toba Batak Culture

Because of the nature of the archive data, as mentioned above, the Batak women who are the subjects of this study are not classified according to their membership of sub-groups of the Batak people. The Batak all originally come from Tapanuli in North Sumatra, and consist of the *Toba*, *Karo*, *Simalungun*, *Pak-Pak*, *Angkola*, and *Mandailing* sub-groups. All of the Batak sub-groups have a patrilineal kinship system, which unites their members in a triadic relationship, consisting of a wife giver clan, a wife taker clan, and a fellow male clan. Genealogical charts and the history of the Batak people can be traced only through the male line. On that chart women and wives are not registered. Under the patrilineal system men and women bear different rights and responsibilities toward their clan. Men are socialized from childhood to have knowledge of their history and custom, and they are responsible for the preservation of their fathers' clans (Simbolon 1998).

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I will take the Toba Batak ethnic sub-group as an example to illustrate the cultural background of the Batak people. The Toba Batak conception of the child of a person refers only to males. As a result, only men have a right to inherit land, and women are never taken into account for this purpose. A woman may ask her father or brother for a piece of rice field land, called *pauseang*, as a gift, but she has no rights to land.

The relationship between father and daughter explains why a daughter is not considered capable of inheriting (Irianto 2003). First, an inheritor is always a son because he alone has the great responsibility of preserving his father's line of descent and his clan. Second, a daughter is considered belong to the clan of her husband, with the responsibility of preserving his clan, so that her possibility of inheritance is enjoyed, together with her husband, comes from her parent in law.

The relationship between husband and wife explains why a widow is not considered capable of inheriting (Irianto 2003). First, with regard to access to the means of production, it is always a man who pioneers the development of land or otherwise dominates it. Second, in relation to reproduction, a wife is tied to the concept of the seedbed (called *panamean*), this being the 'place' where the child of her husband is born and reared. Consequently, a widow has rights only to manage the inheritance from her deceased husband as long as she lives or until her son is mature enough to take care of the property.

The rights of a widow end if she marries again, and the property has to be returned to her deceased husband's clan. That customary rule applies not only to the widow who is childless or even to one who has a son or daughter. In the past the childless widow together with the property of the husband would be taken over by her deceased husband's brother, but in recent times the practice of this levirate custom has dwindled to vanishing point.

### Changing Customary Law in an Urban Context

Nobody knows when precisely the Toba Batak began to migrate to Jakarta, but it was prior to 1920. There are several reasons to migrate to Jakarta. The first is the geographical condition of the native land, which is rocky and barren. It cannot produce more rice than the bare minimum needed for daily consumption at subsistence level. The second is the economic motive of wishing for a better life in another area. This motive has been strengthened by previous successful migrants

who have given the impression of being wealthy when they have returned home for visits. So for example, migrant workers in the plantation could afford to build good houses in their native villages when they came home. The third is the desire for a higher and better education. Education in Batak land has been successfully developed by *zending* missionaries and the Dutch government, and Tarutung in this region was once famously known as ‘the student center’. Nevertheless, education at the highest level can be obtained only in Java island, mainly in Batavia (the former Jakarta). That is another reason for Batak people to migrate to Java.

The presence of the Toba Batak community in urban Jakarta has been marked by the emergence of the traditional communities in the form of many clan associations, called *punguan* or *partukoan* in Toba Batak. Interestingly, this phenomenon cannot be found in the ancestral area. In big cities like Jakarta, several clans have sometimes fused into one association. Even though the Toba Batak are spread throughout Jakarta, they have been united by the activities of the clan association. Its main purpose is for clan members to help each other economically in the struggle for survival in the urban area. The second purpose is for them to help each other in performing the ritual ceremonies related to events in the life cycle such as birth, baptism, marriage, and death. The last purpose of the clan associations is to provide an institution for dispute settlement (Panjaitan 1977: 64–66).

A large part of the traditional custom is still maintained in urban life, but a part of it is changed, or at least is modified into a simpler form. In inheritance law, daughter and sonless widow are still generally excluded from inheritance, but in some contexts this has been changed. Ihromi et al. (1996) show that daughters and widows of migrant Toba Batak in the city have opportunities to gain access to inheritance when certain conditions are present. These are: when a father or a husband who is still alive declares a testament, when he transfers inheritance in the form of jewelry and money (sometimes by selling a plot of land or a house), and when he provides educational opportunities for daughters.

However, still relatively little property passes by inheritance to women. Daughters may get as much as their brothers from their parents’ joint property, but they do not have any right to an ancestor’s property; whereas widows might get half of the matrimonial property instead of some of their own ancestor’s property. A grave obstacle lies in the formal regulation, in which women are not mentioned as having any entitlement to inheritance (Ihromi et al 1996).

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Diversity in the interpretation of customary law can be traced back at least to 1961, when the local court in South Tapanuli decided that a woman had a right to inherit her father's land. It seems that what is considered to be customary law has been diversely interpreted throughout Batak history. Change to and preservation of past law co-exist.

### The Findings

The four cases to be described which involved litigation in the courts provide a picture of how the two legal systems compete with and interpenetrate each other in the trial process. The cases show how parties choose certain legal institutions according to their interests or the possibility of gaining advantage in litigation. Data concerning the origins of the cases has been gathered from the court documentation.

#### *Dispute settlements involving widows*

##### *Case 1: Lamtiur v. Hariman*

A woman called Lamtiur married Hariman in the Protestant church HKBP (the Batak Christian church), North Tapanuli, in 1961. They moved to Jakarta and made their matrimonial home there. After ten years of marriage they had no children. Lamtiur filed her case in 1971 for divorce and a half of the matrimonial property. She stated that her husband had broken the law by sleeping with other women. In the lawsuit she stressed that she had been in continual conflict with her husband for a large part of their married life. She had experienced violence from her husband who had threatened and humiliated her, and sent her away from their house. The conflict between them was affecting the relationships of their extended families' members. Lamtiur claimed divorce, a garnishee order, and a half share of the matrimonial property.

In court the husband sought to have the case determined according to the customary law, even though he had been living in Jakarta for a long time. His defence relied on principles of the



customary law. Under these, he claimed, a wife could be divorced if she had had no children by taking her back to her parents and clan. Furthermore, he argued, the wife had no right to matrimonial property because all property in a marriage was owned by the husband, and the husband had no responsibility for the financial support of his wife after divorce. At that time Lamtiur had been sent by her husband Hariman back to her parents in the village. In his argument this was enough to prove that he divorced her according to the customary law.

Lamtiur brought her case to the Court of first instance. The judge rejected the claim to divorce based on customary law, and held that the wife had a valid claim to one half of the matrimonial property. The judge acceded to Lamtiur's claim for divorce, and decided that Hariman had to give monthly financial support to his ex-wife.

Hariman went to the Appellate Court. That court's decision surprised him. The judge confirmed the decision of the lower court, and in addition ordered that one half of the matrimonial property be given to the wife.

The case continued, because Hariman filed an appeal in the Supreme Court. At this level the court referred to the Indonesian Marriage Act (above), which provides that matrimonial property is to be equally divided, and gives the wife a right of action to recover one half of such property. The court disregarded the marriage based on customary law because it had not been clearly proved where and when it took place. Because there had been a marriage in Church, the judge was of the opinion that its legal consequences were to be determined according to the Church's principles. Moreover, the husband's responsibility to support his wife financially was limited, lasting only as long as she did not remarry. The Supreme Court was very favorable to the wife.

That case illustrates the situation in which parts of two legal systems are used in the same process. It was thus an instance of legal pluralism, defined as the situation in which an individual is the subject of more than one normative system. Although the conflict of law was not finally solved by the choice (K. Benda-

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Beckmann 1986: 133) the case illustrates a different point. The wife brought the state law into play by going to the state court, after experiencing unbearable domestic violence. In terms of the 'forum shopping' available to the parties, her choice may be seen as part of a struggle against *adat* law considered as patriarchy.

*Case 2: Saurma v. Jadengan*

Jadengan had a wife and three children when he married Saurma as a second wife. They have a daughter. During the period of the second marriage the couple owned a plot of land, a portion of dry field, a house in the village, and another house in the city (Pematang Siantar, North Sumatra).

After 32 years of marriage, in 1980 Saurma brought proceedings in court against her husband. She gave five grounds. First, Jadengan had without Saurma's agreement renovated the house in the city and integrated it into his first wife's house. His first family were living there, while Jadengan had always promised Saurma to ensure that this house would pass to Saurma's daughter. Second, Jadengan had never consistently given her money. Third, Saurma could not continue the marriage any longer because they were always in conflict. Fourth, Saurma had suffered from domestic violence. Her husband treated her as a slave and often hit her. Fifth, the children of Jadengan's first wife often treated Saurma's production of crops from her field as theirs and acted as if Saurma was not there.

Based on these five reasons, Saurma claimed divorce from Jadengan, and sought a ruling as to her entitlement to property she acquired during the marriage as matrimonial property. Jadengan denied all Saurma's allegations. He opposed divorce, saying that he had lived with Saurma for a long time, and now he felt that he was old.

The judge of the local court granted Saurma a divorce on the grounds she had given. The property was to be divided into two equal parts. Half was decided to belong to Saurma, and the other part to be owned by Jadengan.

Jadengan appealed to the Appellate Court. This court agreed with the local court with respect to the divorce, but not with respect to the matrimonial property. The sharing of the property into two parts was set aside. The court was of the opinion that Jadengan's first wife must be involved in any sharing, since any decision about this would affect her future also.

Saurma appealed against the Appellate Court's decision to the Supreme Court. Here she failed. The Supreme Court affirmed that divorce proceedings could not be used to determine also a claim to matrimonial property.

Thus judge-made law took into account the other woman, Jadengan's first wife, by denying the claim of the second wife.

#### *Dispute settlements involving daughters*

##### *Case 1: Dem and Ben v. Langtawas and Ngadu*

This is a case which is not forgotten in the history of Indonesian inheritance law. This decision, given in 1961, was the first in which a court declared that men and women had equal rights. According to this decision, a woman originating from a patrilineal kinship system is to be considered an inheritor.

A man named Rolak had a daughter named Dem. She claimed her deceased father's property against the sons of her father's brother, Langtawas and Ngadu. In 1929 the *adat* judges<sup>3</sup> stated that Dem was only allowed to use her father's land, but did not own it, because as a woman she had no rights of inheritance. Dem challenged that decision.

Consequently Langtawas and Ngadu initiated a lawsuit. Unfortunately, Dem died during the trial. Dem's daughter, Ben, continued her mother's case. The judge of the local court ordered

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<sup>3</sup> The big man (the head man, chief) who is recognised as an authoritative leader functions also as a judge in settling disputes among members of the community.

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the men to return the disputed land to Dem. They objected to this decision and took the case to the Appellate Court.

Surprisingly, the Appellate Court in Medan set aside the trial court's decision. The Appellate Court asserted that the customary law was to be applied, according to which inheritance passes to the male line. It followed that the granddaughter had no rights in her grandfather's property.

Dem brought her case to the Supreme Court, and that court's decision in 1961 placed the woman in the position of an inheritor.

The essential part of the judgment reads:

Based on humanity, public justice, and the essence of equal rights for man and woman; we decide and validate for the whole of Indonesia that daughter and son have equal rights to inherit from an owner. Therefore, the portion of inheritance of daughter and son should be equal. It follows from this decision that among the Tanah Karo a daughter must be considered as an inheritor who has a right to a part of her parent's property.

Ben eventually recovered her grandfather's land after an exhausting dispute which had been begun by her mother and continued after her death. The litigation lasted for 32 years.

That case was heard by both customary and state institutions. The first (*adat*) institution insisted on applying customary law, which did not recognize a woman as an inheritor. However, that decision was considered as relatively favorable to women at that time, since it gave them rights to use land, although not to own it. That first decision did not settle the dispute in a real sense because of women's dissatisfaction with it. The opponents claiming through the male line were also upset, and it was they who brought the case to the state court. This action became a 'blessing in disguise' viewed from the women's perspective. By taking action against her in the courtroom, her opponents caused the woman to interact with the

state institutions, which had not previously occurred with women from the villages.

The Supreme Court's decision began to formalize a principle of equal rights for women and men in inheritance matters in Batak land, and has had an important impact on further judge-made law regarding inheritance in Indonesia.

*Case 2: Til v. Dja Lenggang*

At the core of the case below is a debate about whether the disputed land is categorized as ancestral property (a folk concept for which the term is *harta pusaka*) or matrimonial property. The boundary between these categories is important because it determines whether a woman has a right to inherit particular property. Ancestral or clan property is absolutely not allowed to be owned by a woman. This case concerns a Batak man who had no son but six daughters. One of his daughters, Tilam, initiated a dispute over her father's properties, which were occupied by the son of her father's brother. After 30 years the court decided in her favor.

Baginda Muda was a rich man. He had many rice fields, lands and houses. Before he died in 1940, he left his property in the hands of the village leader, Raja Kampung. His children were young at that time. After he died, the property was transferred to his step brother Pinajungan, who had the same mother as he. Pinajungan had a son, Dja Lenggang. In 1963 Pinajungan transferred Baginda Muda's property to Dja Lenggang.

Tilam was the only one of Baginda Muda's daughters who stayed in the village. She requested Dja Lenggang several times to give her father's property back to her, but always without success. On one occasion the case was heard at a village trial, but the decision satisfied neither of the parties.

Tilam brought her case to the Court of First Instance. She claimed a declaration that the disputed property had belonged to her father and mother as matrimonial property. Further, she sought an order for recovery of the property, and compensation from Dja Lenggang and any other person who had ever taken

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benefit from the land between 1940 and the date of judgment. Referring to the judge-made laws from recent years, the Court of First Instance decided in her favor. The judge decided that the right to inherit was held by the daughter, not the father's step brother.

Dja Lenggang took the case to the Appellate Court. Interestingly, this Court took into account a custom called *Holong Ate*, according to which a gift may be made to a daughter based on generosity if a Batak man dies without having a son or descendant in the male line. Thus the Appellate Court strengthened the decision of the Court of First Instance by adding an additional ground.

Dja Lenggang appealed further to the Supreme Court. He relied in part on a Supreme Court decision of 1969 which had decided that a daughter did not have a right to inherit her father's land in South Tapanuli. Further, Dja Lenggang recognized *Holong Ate*, but objected to giving the whole property to Tilam. He argued that, because the litigation had already continued for more than 30 years, some parts of the properties had been changed. Because of this, he claimed, only a part of the property should be given to Tilam.

In its decision, given in 1973, the Supreme Court rejected Dja Lenggang's arguments. In the court's view, when Baginda Muda died his property had immediately vested in his inheritors. The court decided in favor of Tilam.

This case indicates that an interesting game may be played over the issue, to whom the property belongs. The property may be characterized as ancestral property, which is owned by the clan (male line), or as matrimonial property, which is owned by the parents. The first category is not allowed to be owned by a woman absolutely. The blurred border between ancestral property and matrimonial property becomes the object of manipulating discourse in court.

Relating this to discussion of legal pluralism, it confirms Keebet von Benda-Beckmann's observation that the boundaries between various legal systems are blurred (K. von Benda-Beckmann 2002: 3). The customary institution of *Holong*

*Ate* which is adopted by the court is the notion of a gift to a daughter based on generosity. But the court modifies this, converting it into a daughter's right to own her parent's property. This is an interpenetration of customary law and state law.

This dialogue reflects the nature of the political setting and its influence on the law in practice, from the perspective of an ordinary woman who did not even finish her elementary school education. There is a linkage here between the national setting and the position of an individual.

*Illustration of a woman's reluctance to go to the state court*

The following data describes a social and political context in which the state court and state justice are at a practical level unreachable for a woman who has trouble arising from an inheritance issue.

Mrs Saragih (a fictitious name) is a widow. She married Mr Saragih as a second wife in 1965. This marriage was under *adat*, and was not formalized by the state. She reared 12 children, of whom five came from the Mr Saragih's first marriage and seven came from her own marriage. During the marriage, her husband and she ran a good business. They managed two boat workshops in a water-front area near Jakarta, and a workshop for cars, and they owned a large amount of land and a number of houses. Unfortunately, her relationship with her husband was not good. Her husband dishonored her, and once he even threatened her with a gun.

Her story of distress did not end with the death of her husband in 1984. A new conflict relating to the marriage property began. According to her this was because there was no authority in the family who could decide to whom the property belonged. All of the certificates of title to the land and houses were kept by her children. They argued that Mrs Saragih's marriage was not legal, because it was not certified by a state paper.

Such a woman does not have access to the state institution, but she may be forced to engage with a state institution in disadvantageous circumstances:

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One of Mrs Saragih's children made a complaint to a police officer when she sold a piece of equipment from her workshop.

In the police station I was alleged to be a trafficker. I was charged with trafficking in my husband's belongings. How come, I am his wife? Since when does government prohibit a wife to possess her husband's property? If there is an Act on that, punish me dead. I am not a trafficker.

After that the children started to sell their mother's goods one by one. In this they were backed up by one of their relatives from Mr Saragih's line, who had become a lawyer.

In her opinion it is true that there is competition between state law and customary law. It is interesting to see that she is aware of how much more powerful is the state law than customary law in an urban context. Furthermore, she is perspicacious. She sees that she has no right to the property if the distribution of the estate is based on customary law.

*Researcher* (the author): Do you know why your children, mainly your step sons, are doing this to you ?

*Mrs Saragih*: They want to divide these lands and houses like fried peanuts [i.e., in an easy way]. I do not want to. It should be based on *the law*.

*Researcher*: What do you mean by this?

*Mrs Saragih*: The children want to divide the property according to *Raja Batak's rule* [i.e., according to customary law, as determined by people who are considered to be authorities in ethnic terms]. But I do not want to. *Raja-Raja Batak* is in ancestral area, it is not valid in Java. She added: I want my property to be distributed when I am still alive, based on *law* [by which she meant state law].

*Researcher*: Are you not ready to go to court?

*Mrs Saragih*: But law is costly, *law is money*.



How marginal is a woman's access to state law can be seen in the following dialogue, when she was required to come to the police officer for the second time.

Mrs Saragih wanted to have one of her pieces of land back. At that time it was occupied by one of her husband's relatives, one Malaon. What did she do? She came to that land almost every day and shouted loudly demanding her land back. Malaon reported her to the police. When the police officer asked whether she had destroyed some of Malaon's belongings, she answered: "I did not destroy his belongings, I just want him out from my land." The officer said that the land was not hers. It belonged to Mr Saragih. She replied: "Who is Mr Saragih? Let me tell you, he is my husband." The police officer asked: "Can you show me proof of your marriage, a certificate?" She replied: "Let's say, I was living together with him without a paper, but I gave him seven children from it."

She had a number of bad experiences arising from the inheritance conflict. She was violated by her son:

In 1994 she was driven out of her house. This occurred when a boy, one of her children, who had been drinking, came home looking for her. She ran upstairs into her room and from there she could look down on everything that happened. She asked another of the children to lock all the doors and windows. The boy was very upset, and he knocked on the door loudly on and on. Finally someone opened the door for him. What did he do? He took a knife, and went looking for his mother. He began to walk upstairs. Mrs Saragih was aware that she needed to act to save her life. As the boy arrived at her room, she jumped down into the first floor of her house. She ran away, and did not once come back for about four years. She stayed with friends during this period.

After her escape she went back to the land which had been occupied by Malaon. She started to continue her life by building a small kiosk. She also made a small hut to protect herself from sun and rain. Her children lived elsewhere but she did not know where.

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One day the son who had tried to kill her appeared. He had been informed that his mother was back. Mrs Saragih told me that suddenly the boy took boiling water and threw it onto his mother's body. Mrs Saragih was badly injured, and some taxi drivers who lived nearby took her to the hospital. But she came home after several hours. She did not want to stay in bed in the hospital because she was afraid that her son would come there and poison her.

She opened her shirt and dress to let me see her injury, which covered a large part of her body. I asked her why she did not go to the police. She answered: "*Going to the police means paying them off. The police do not give us security, they squeeze us.*"

Interfaces between politics and law both at the national level and in local contexts are shown by the following dialogue.

*Researcher:* Do you have a certificate or any identity proving that the land where you sit now belongd to you?

*Mrs Saragih:* No, I do not. It is still in the name of my husband.

*Researcher:* Don't you want to change that paper on your land to show your own name?

*Mrs Saragih:* We wait to see which political party is going to win.

This interview was held two days before the Indonesian general election of 1999. She expected that the Indonesian Democratic Party (i.e. the party led by Megawati, who later became President) would win. She thought that if that happened, mismanagement and corruption at all levels of the court bureaucracy would be finished. Then she could afford to deal with bureaucracy with less payment.

## Discussion and Conclusions

Legal pluralism in this paper has two meanings. The first is 'actor oriented', according to which an individual becomes subject to more than one legal system. The women in the disputes faced various different legal institutions, and had to

decide on the best strategy. In the context of these competing legal orders, women seek to avoid the substance of the customary law, or at least what is considered to be customary law, which they view as injustice. They have more faith in state institutions, however vague and ill-founded their expectations.

Faced with legal dualism (a form of legal pluralism), the women's choice of law seems to have been in the nature of a continuum. They used customary law and state law by turns. In that context, it is hard to detect the boundary of any kind of law we studied. It makes little difference that the customary law is better known because its institutions are closer to the parties, and it is tied to their kin relationships and their accepted cultural concepts.

It is important to notice the cases from the women's perspective. The reasons for the widows and the daughters taking their cases to the state court are different. The widows bring their suits to court as a last resort, because of suffering very much from domestic violence by their husbands. In contrast, the daughters go to the state court from choice. The bravery of those daughters who battle their opponents in the state courts with the risk of considerable social loss, make them agents of change in relation to inheritance within their community.

The second meaning of legal pluralism in this study is the condition of competition and interpenetration of two or more legal orders within one process. What is considered to be customary law has been in a state of change throughout Batak history. In the same domain many people may have their own interpretations of what they see as customary law. State law also deals with inheritance, and is also interpreted diversely. The diversity can be shown by the different decisions made at various level of courts in the same case.

Sometimes what is called customary law is affected by the substance of state law. Some judicial decisions giving equal rights to women have referred to what is considered to be recent customary law or modified customary law. For example, the *holong ate* institution originally meant a gift made to a woman to allow her to manage the land, not to own it, and it was viewed as a matter of charity. It has been modified by the judges to become a right of a woman to own her father's land, and so has become an entitlement to inherit. In that context, where the boundaries between the two legal systems is not obviously clear, the configuration of both state law and customary law is relatively fluid.

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A further question is, how does state law work in daily practice? Much judge-made law has declared equal rights for women since 1961, but this is like the tip of an iceberg. Empirically there are many more women who do not have access to justice dealing with inheritance cases than those who do. There are various reasons why most women cannot bring their cases to state courts.

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Mrs Saragih illustrates woman's reluctance to go to the state court. Generally women who are involved in conflict and dispute have faith in the state legal institutions. They feel that what they consider to be state law offers them a greater prospect of equal rights. Mrs Saragih's interpretation of state law shows us how high is women's expectation of state law.

But on the other side, the state plays a limited role in advancing women's rights to equality. Justice stays on paper, and women have almost no access to it. Legal reforms regulating land ownership, and aiming to democratize access to resources, mainly land, do not terminate patriarchy in families (Moore 1988: 252, citing Stacey). That legal reform recognizes equal rights for women at a formal level only, and not in daily practice, because law and statute can be denied or overridden (Moore 1988: 237). In the Indonesian context, getting justice in gender cases is very tiring and expensive because of the corruption in bureaucracy, especially under the New Order regime.

For women their disputing processes were painful. Cases lasted a very long time, those described above requiring 25 or 30 years. One woman died during the process, and the litigation was continued by her husband, who also eventually died, the case being taken over by the daughter. The limited impact of state institutions is also indicated by the cases of widows. They go to court as a last resort, activated by domestic violence as the trigger factor.

This study shows the necessity of securing equal rights for women not only as a matter of law but also in practice. Indonesia is committed to implementing international agreements such as the Convention on the Elimination of All Forms of Discrimination against Women. Inheritance is one of the problems addressed by article 5 of this Convention.<sup>4</sup> This commitment should encourage government to

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<sup>4</sup> States parties shall take all appropriate measures: (a) to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of

bring laws into conformity with international conventions and to foster global awareness of women's rights. Justice for all, including women, is the main requirement of legal reform for the future Indonesia.

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the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women...

Indonesia ratified this Convention in 1984 through Act no. 7/1984.

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