



## Legal Vacuum in Inheritance Dispute Resolution: A Comparative Study of Customary Law and Positive Law in Bonokeling

**Zaenudin<sup>1\*</sup>, Ajeng Aditya Listyani<sup>2</sup>, Wasis Singgih Sasono<sup>3</sup>, Nanda Rahayu Haryadi<sup>4</sup>,  
Pritha Arintha Natasaputri<sup>5</sup>**

<sup>1</sup>Faculty of Law, Universitas Jenderal Soedirman, Purwokerto, Indonesia,  
[zaenudin.lawdept@unsoed.ac.id](mailto:zaenudin.lawdept@unsoed.ac.id)

<sup>2</sup>Faculty of Law, Universitas Jenderal Soedirman, Purwokerto, Indonesia, [ajeng.aditya@unsoed.ac.id](mailto:ajeng.aditya@unsoed.ac.id)

<sup>3</sup>Faculty of Law, Universitas Jenderal Soedirman, Purwokerto, Indonesia, [wasis.singgih@unsoed.ac.id](mailto:wasis.singgih@unsoed.ac.id)

<sup>4</sup>Faculty of Law, Universitas Jenderal Soedirman, Purwokerto, Indonesia, [nanda.rahayu@unsoed.ac.id](mailto:nanda.rahayu@unsoed.ac.id)

<sup>5</sup>Faculty of Law, Universitas Jenderal Soedirman, Purwokerto, Indonesia, [pritha.arintha@unsoed.ac.id](mailto:pritha.arintha@unsoed.ac.id)

\*Corresponding Author: [zaenudin.lawdept@unsoed.ac.id](mailto:zaenudin.lawdept@unsoed.ac.id)<sup>1</sup>

**Abstract:** This study examines the legal vacuum in resolving inheritance disputes in the Bonokeling indigenous community in Pekuncen Village, Jatilawang District, Banyumas Regency, Central Java, by examining the tension between customary law norms and the national legal system. Although the customary inheritance norms of the Bonokeling indigenous community, based on family deliberation, are still alive and well, the resulting agreements often lack legal force in the state's judicial system. This study employed a normative and empirical juridical approach (socio-legal research). Data were obtained through literature review, interviews, and observations within the Bonokeling indigenous community. The findings indicate that the legal vacuum is institutional and regulatory, rather than normative, because customary norms persist but have not received adequate formal recognition. The absence of a legal mechanism to validate the results of family deliberations creates the potential for legal conflict when disputes are brought to court. Therefore, this study recommends the need for a legal strengthening scheme for customary decisions, for example through the creation of a peace deed or legal recognition of customary deliberation mechanisms. The implications of this research emphasize the importance of integrating legal pluralism into the national legal system to ensure substantive justice and legal certainty for indigenous peoples.

**Keyword:** Bonokeling, Customary Law, Inheritance, Legal Vacuum, Legal Pluralism

### INTRODUCTION

The inheritance system in Indonesia is based on three laws: positive law, Islamic law, and customary law. In many Indonesian communities, customary inheritance law remains very strong and plays a significant role in social and economic life. This system is often passed down from generation to generation and is strictly adhered to by local communities. (Van Dijk, 1964) The customary law system is also applied to the inheritance process. Although the use of laws that are relatively well-known to the community, this does not necessarily eliminate disputes

within the community. Inheritance disputes need to be resolved to create a good order of life by fostering peace.

This situation is clearly evident in the Bonokeling indigenous community in Banyumas, demonstrating that customary inheritance law continues to function as the dominant normative authority in resolving family disputes. The mechanism of deliberation, family consensus, and the authority of customary leaders form a collectively recognized dispute resolution structure. The strong role of customary institutions does not eliminate the potential for conflict, as differing perceptions regarding inheritance proportions, rejection of heir status, and dissatisfaction with the distribution of assets often arise, demanding a resolution forum acceptable to all parties (Wijaya, 2020).

Several previous studies have confirmed that conflict resolution is carried out in accordance with customs and laws that have developed within society, including in the context of customary law that is still alive and practiced by local communities. The existence of customary norms often lacks formal recognition within the national legal system. As reflected in the research (Wijaya, 2020), the legal vacuum occurs not due to the absence of social norms, but rather due to the absence of implementing regulations that recognize these local principles within the positive legal system. This situation is parallel to the case of inheritance in the Bonokeling community, where inheritance agreements based on deliberation and family harmony do not have executorial power when disputed in formal judicial forums. In addition, research on the role of Minangkabau women shows that customary mechanisms can provide space for fair and participatory decision-making within the social structure of customary law communities. (Dilova *et.al*, 2022) This strengthens that local norms, including family deliberation mechanisms in inheritance distribution, are living laws that should be integrated into the national legal system through the principle of recognition of customary law. The principle of deliberation and agreement is a process for the parties or heirs to divide inheritance assets, led by the heir who is considered the oldest, through deliberation. (Praditha, 2023).

As is the case in the Lampung indigenous community, when a dispute arises, resolution is always sought through a family approach and deliberation and consensus (Faradila & Dewi, 2023). Madurese also recognize the principle of confidentiality in mediation. Mediation is a method of conflict resolution that aligns with Madurese culture, which highly values “shame” or “humiliation”. Filing a lawsuit over inheritance is considered shameful, and inheritance disputes are especially embarrassing, especially because of the damage they cause to a family's reputation (Nury, 2023).

However, these studies emphasize the sociological aspects, without examining the formal legal status of customary decisions themselves, particularly regarding their potential legal validity, enforceability, and relationship to state law. In the Bonokeling context, available academic studies have not provided a comprehensive description of how customary decisions are made, how their resolution mechanisms are implemented, and how these decisions are treated when they come into contact with formal judicial institutions such as the District Court or the Religious Court.

The absence of such studies indicates a significant research gap. First, no research has conceptually explained whether a “legal gap” exists in the resolution of Bonokeling customary inheritance disputes, and in what aspects this gap exists-whether it be a normative gap (lack of legal norms), a regulatory gap (no formal rules governing the mechanism), or an institutional gap (customary institutions lack state-recognized enforcement mechanisms). Second, no legal studies have been conducted to examine whether Bonokeling customary decisions can be registered, executed, or challenged through state courts. Third, no studies have combined the theories of legal pluralism, recognition theory, and living law to explain the position of customary decisions within the national legal structure. Fourth, there is a lack of empirical data

describing the actual procedures for resolving inheritance disputes in the Bonokeling community and the dynamics of the implementation of customary decisions in practice.

This gap in research is crucial, given that the 1945 Constitution, through Article 18B paragraph (2), recognizes the existence of customary law communities and their traditional rights as long as they remain alive and in line with societal developments. However, this constitutional recognition does not automatically grant customary decisions enforceable power, particularly in civil disputes such as inheritance. This raises legal issues regarding how the state should treat customary decisions. Whether the decisions have only moral-sociological force or can acquire legal value as peace agreements or enforceable documents. The absence of formal guidelines creates legal uncertainty and the potential for subordination of customary decisions when confronted with state judicial institutions.

Against this background, this study focuses on three main issues: how inheritance dispute resolution mechanisms are implemented in the Bonokeling indigenous community: the legal force of customary decisions arising from this resolution process; and the extent to which Bonokeling customary decisions can be registered, enforced, or tested through state judicial mechanisms. Thus, this study seeks to make both theoretical and practical contributions by addressing gaps in previous research through an interdisciplinary analysis of customary law, legal pluralism, recognition theory, and normative studies.

## METHOD

This research uses a normative-juridical approach integrated with empirical research (socio-legal research) to analyze the position of Bonokeling customary decisions within the national legal structure and to examine inheritance dispute resolution practices at the community level. The normative-juridical approach is used to examine the normative framework governing the recognition of indigenous communities, inheritance law, the force of decisions, and the enforcement mechanisms of decisions through an analysis of the 1945 Constitution, laws and regulations, jurisprudence, and legal doctrine (Abubakar, 2021). This normative study aims to identify legal gaps, including normative, regulatory, and institutional gaps, that arise in the relationship between customary decisions and positive law.

The empirical approach was applied to obtain a factual picture of inheritance dispute resolution practices within the Bonokeling customary community. Data were collected through in-depth interviews with customary leaders, heirs, and community leaders, as well as through direct observation of deliberation processes, deliberation patterns, and customary decision-making mechanisms. Empirical analysis is necessary to verify the extent to which customary norms function as living law and are consistently implemented in community life.

The research data consists of primary and secondary data. Primary data includes interviews and field observations, while secondary data is obtained from customary law literature, scientific articles, previous research, and Bonokeling customary documents, such as minutes of deliberations, inheritance distribution records, and customary decisions, if available. A purposive sampling technique was used to select informants with substantial capacity and relevance to the research topic.

Data analysis was conducted using an interactive qualitative analysis method that simultaneously combines normative and empirical findings to identify patterns, inconsistencies, and the construction of relationships between customary decisions and state legal mechanisms. (Conny R., 2010) The normative dimension is processed through legal interpretation methods, encompassing systematic, historical, and teleological interpretations of provisions regarding the recognition of indigenous peoples. Empirical data was analyzed through thematic categorization and pattern matching to map levels of compliance with customary norms, dispute resolution practices, and forms of interaction or friction with positive law. The integration of these two approaches yields a comprehensive analysis of the inheritance

dispute resolution mechanisms in the Bonokeling custom, the strength and legitimacy of customary decisions, and the identification of legal gaps and their implications for legal certainty when customary decisions intersect with formal judicial mechanisms such as District Courts and Religious Courts (Zulkrnain, 2021). This methodological approach is relevant for examining the dynamics of Indonesian legal pluralism and outlining the position of living law in relation to state law.

## RESULTS AND DISCUSSION

### Inheritance Dispute Settlement in Bonokeling

Dispute resolution is a complex process, but it is not impossible. Success in resolving disputes depends heavily on the willingness and good faith of all parties involved. The inheritance dispute resolution process can be carried out through litigation or non-litigation (Apyrano et al., 2024). However, Indigenous Communities usually use non-litigation mechanisms to resolve these conflicts in accordance with local customary values. Resolving disputes regarding inheritance distribution non-litigation with family. In addition to legal processes, non-litigation mediation can also be used to resolve disputes. The purpose of implementing this is to prevent the conflict from continuing for a long time by gathering various opinions and interests of the heirs in the negotiation, including involving mediators from among traditional leaders or religious figures (Terok et al., 2021). Non-litigation dispute resolution methods offer many advantages for heirs when resolving inheritance disputes. Heirs are more likely to choose non-judicial approaches, such as mediation, as an alternative to resolving these disputes (Nisa, 2025).

In the Bonokeling indigenous community, deliberation is the primary means of resolving conflicts. Deliberation is conducted by the families receiving the inheritance to reach an agreement. The traditional leader assists in the deliberation process and acts as a mediator if necessary.

The inheritance distribution system is based on family deliberation, emphasizing the principles of harmony and moral considerations. For example, a child who has devoted himself to his parents during his lifetime will receive more rights than other children, or a child who is educated or educated with financial assistance will receive fewer rights than other siblings. The distribution of inheritance does not refer to the provisions of civil law or Islamic law, but is determined flexibly according to mutual agreement among family members. This inheritance pattern has been practiced for generations and is accepted as a living customary norm and is adhered to by the Bonokeling community.

### The Power of Decisions of the Bonokeling Indigenous Community

Decision-making practices in the Bonokeling indigenous community demonstrate how the customary legal system remains viable amidst the dominance of state law. Legal pluralism is a natural condition of any society where more than one normative system coexists. Bonokeling customary decisions are understood not merely as social decisions but as a form of living law that continuously interacts with formal legal norms. Empirically, the Bonokeling customary structure demonstrates how the power of social legitimacy can maintain legal autonomy at the community level, even when not explicitly recognized within the state legal framework.

The approach of legal pluralism in Indonesia enriches this understanding, as the national legal system itself historically and philosophically recognizes the existence of customary law as a legitimate source of law. Indonesian legal pluralism is integrative, not dualistic, where customary law and state law complement each other in the social sphere. In the Bonokeling indigenous community, customary decisions emerge from deliberations rooted in local wisdom and religious values, resulting in morally acceptable outcomes for the community. Therefore,

this form of legal pluralism is dynamic, where the legitimacy of customary decisions stems more from community consensus than from formal legality. (Achmad Hariri & Basuki Babussalam, 2024).

Research into Bonokeling customary decisions cannot be conducted monolithically because the legal systems operating within them are overlapping and mutually influential. A legal pluralism approach requires cross-level analysis, examining the relationship between customary norms, religious law, and state law, to understand how legal decisions are implemented in social practice. The strength of Bonokeling customary decisions is measured not only by normative compliance but also by social acceptance arising from the deliberation process and the moral legitimacy granted by customary leaders. On the other hand, legal pluralism presents challenges when customary decisions potentially conflict with state policy or constitutionally guaranteed citizen rights. Customary legal practices often create a dialectic between state law and customary justice. Inheritance disputes or social violations that must be adjusted to positive law by the Bonokeling indigenous community, choose customary resolution as the main choice because it is considered fairer, contextual, and guarantees social harmony which is the main orientation of indigenous communities (Harahap et al., 2025).

The power of Bonokeling customary rulings can be understood as a concrete expression of living legal pluralism. Indonesian legal pluralism must be seen as a reflection of the values of Pancasila, where law is not merely a tool of power but also a vehicle for the nation's morals and culture. Bonokeling customary rulings are not a form of resistance to state law, but rather a practice of legal autonomy that strengthens substantive justice at the local level. Legal pluralism, both in its classical and national senses, cannot be understood solely in its entirety but through a contextual approach that respects the interaction between norms, values, and social realities (Adi Surya, 2023).

The legal vacuum in inheritance dispute resolution among the Bonokeling indigenous community occurs when positive law fails to address the complexity of the social and spiritual relations that underlie inheritance distribution. The community relies more on customary mechanisms governed by deliberation and principles of communal justice, rather than simply the formalities of national inheritance law. Legal pluralism in Indonesia creates a dynamic space for customary law to fill gaps in positive law, especially when state norms are not adaptive to the local context (Achmad Hariri & Basuki Babussalam, 2024).

Legal pluralism theoretically provides a corrective mechanism to address the weaknesses of a single legal system that tends to ignore local values and community morality (Achmad Hariri & Basuki Babussalam, 2024).

Methodologically, analysis of the binding force of customary decisions cannot be conducted monolithically but must utilize a pluralist lens that recognizes the complexity of the legal system in Indonesia. The theory of legal pluralism holds that various legal systems, such as state law, customary law, custom, and religious law, operate simultaneously and dynamically within a single social space. This normative complexity was historically reinforced by colonial legal policies, particularly through the influence of the Receptie Theory during the Dutch East Indies era, which *de facto* shaped the legacy of legal pluralism in Indonesia. As a result, inheritance law, for example, officially recognizes the coexistence of at least three living and interacting systems: customary law, Islamic law, and Western law (Adi Surya, 2023). This legal legacy forms the structural foundation for the current dilemma of customary decisions.

The hybrid and intertwined pluralist legal order demands that communities engage in forum shopping. Meanwhile, the legal force of customary decisions depends heavily on the extent to which they receive structural recognition from national law. Based on the Recognition Theory, which asserts that the validity of a norm only emerges if validated by the fundamental norms of the state (the Rule of Recognition), the binding force of customary decisions lies in

their dilemmatic position between positive law and living law, i.e., depending on whether the customary decision receives formal recognition within the national legal structure. The Recognition Theory of Kelsen (1967) and Hart (1994) explains that a customary norm is only legally valid if it is accepted and recognized by the highest state law (the Rule of Recognition). Thus, customary decisions stand at a crossroads: they are valid if they do not conflict with higher state law (lex superior). This condition essentially places customary decisions in a subordinate position, as their validity must always be tested by applicable positive legal rules.

The binding force of customary decisions often exists in a state of profound legal ambivalence. On the one hand, these decisions are supported by a very dominant sociological force, as evidenced by the absolute obedience of indigenous communities, such as the Bonokeling community, based on spiritual beliefs and traditional authority. However, this social power becomes vulnerable and easily overturned when confronted directly with national legal structures. This vulnerability arises from the absence of a standard and uniform mechanism recognized by the state to grant executive power (exekutoir kracht) equivalent to court decisions. This is rooted in the unification policy that historically eliminated the legally binding nature of customary court decisions within the formal legal system (Simarmata, 2021). This procedural ambiguity creates uncertainty regarding the jurisdiction of customary decisions. Therefore, the decisions of customary institutions are in a subordinate position: although philosophically recognized by the Constitution (Article 18B Paragraph 2 of the 1945 Constitution), procedurally, these decisions are subject to and dependent on the validation and judicial review of the state's formal judicial institutions. The power of decisions of customary community institutions does not solely depend on formal state recognition, but rather on a combination of social legitimacy, socio-cultural sanction mechanisms, local institutional capacity, and sometimes correlation with state norms (1). In the practice of legal pluralism, customary decisions gain binding power due to three things: 1) the internal legitimacy of community members' trust in customary authority and the deliberation process; 2) social control mechanisms of moral sanctions, social exclusion, or rituals that make compliance more effective than exclusive state enforcement; and 3) interaction with the formal legal system, where procedural recognition or available litigation space can strengthen or weaken the effectiveness of customary decisions (2).

Legal pluralism emphasizes that when customary rulings resonate with local values and find a way to be compatible with national rules, such as community recognition, rights registration, or civil-based enforcement, their binding power increases. Conversely, the subordination of customary institutions to the national legal regime results in uncertainty in implementation. (3) Living Law Theory (Ehrlich 1936; Rahardjo 2009) emphasizes that the strongest law is the law sincerely accepted, believed in, and obeyed by the community itself as 'living law' (lebendes Recht). This community compliance is further legitimized by Max Weber's Theory of Authority (Weber 1947), which sees communities as obedient to customary institutions out of respect for traditional authority passed down through generations.

The power of customary rulings is manifested through collective obedience, for example, the implementation of customary sanctions, the role of customary leaders as legitimate mediators, and institutionalization strategies that enable customary rulings to function as alternative dispute resolution mechanisms, but are also vulnerable when formal means of enforcement or administrative recognition are unavailable (4-7). Therefore, understanding the power of customary decisions must see them as a hybrid phenomenon as legal-social (legitimacy & sanctions), institutional (customary institutions & state relations), and praxis (daily compliance and deliberation processes) all of which determine whether customary decisions are only normative/recommended, or truly binding in local social and legal life.

## CONCLUSION

Based on research findings, the legal vacuum in resolving Bonokeling inheritance disputes is more institutional and related to a lack of legal recognition, rather than a normative vacuum. Bonokeling customary norms remain alive and firmly held by the community. However, they have not been incorporated into a formally binding positive legal framework. Legally, it is understood that "as long as there is no law recognizing the existence of indigenous communities, they remain non-existent, thus officially, customary rules appear to be non-existent in the eyes of the state". The implication is that decisions made through customary family deliberations, agreed upon together, lack the evidentiary force of national law. Consequently, inheritance settlements deemed settled according to customary law may be deemed invalid by state courts.

This situation often results in the results of customary deliberations being less than legally final. Formal legal systems tend to require written evidence and formal procedures, leaving customary agreements merely as living law without binding sanctions. It was found that the lack of legal recognition of customary decisions renders the results of these deliberations without the force of national law, allowing disputes deemed resolved according to customary law to re-emerge when brought to court. This situation highlights the need to bridge the gap between customary mechanisms and national legal provisions.

A legal framework is needed to strengthen the results of customary deliberations as part of the formal civil process. One proposed solution is to formalize family inheritance agreements in a notarial deed. This notarial peace deed has legal standing and serves as the strongest evidence in resolving civil disputes. Thus, the family deliberation decision can be officially documented and legally binding for all parties, thus providing greater certainty and justice in inheritance disputes.

Furthermore, institutional aspects need to be developed through legal recognition of customary deliberation mechanisms at the national level. National legal policy should accommodate customary deliberation as an alternative dispute resolution pathway, for example by integrating it into legislation. Legal literature underscores the need for "strengthening the capacity of customary institutions and legal recognition of customary mediation processes" as part of an inclusive national legal policy. The legal pluralism approach is highly relevant in this context: it views customary law as not a separate system, but rather a dynamic legal order interacting with national law. Therefore, the integration of Bonokeling customary law into national legal reform must be more than merely symbolic; it requires the development of a framework of justice that respects social diversity and balances state sovereignty with customary sovereignty. With these policy measures and a pluralistic approach, the resolution of inheritance disputes in It is hoped that Bonokeling can take place fairly, effectively and based on national legal certainty.

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