



Legal Pluralism and Inheritance Rights: Resolving Conflicts Between Local Customs and National Law in Indonesia

Hilman Syahril Haq[✉]

Faculty of Law, Universitas Muhammadiyah Mataram, Indonesia

Corresponding: hilmansyahrilhaq@gmail.com

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Abstract

This study describes efforts to resolve the conflicts of local and national law on the customary inheritance practice of the Sasak community. This research was conducted in several areas on the island of Lombok, namely Sade Hamlet, Teruwai Village, Penujak Village, and Bayan Village by using data collection methods in the form of library studies, interviews, and observations to then be analyzed qualitatively through a case approach, legislation, and history. The result obtained that the local law conflict and the national law in the practice of the Sasak community customary inheritance motivated by the difference woman's position in the strata customary inheritance based on the jurisprudence remains the supreme court number 179K/SIP/1974 and number 1589K/SIP/1974 with the concept of Sasak community inheritance which has patrilineal characteristic. Permanent jurisprudence requires that the daughter and son of an heir are jointly entitled to the inheritance in the sense that the son's share is the same as the daughter's, while the traditional inheritance of the Sasak community places sons as heirs to their parents' throne (anaq prangge) so that property in the form of houses, gardens, rice fields and livestock will be passed down to the sons, while the daughters only receive property stored in the house, such as jewelry and beads as provisions for her marriage life. This reality might be caused some latent and manifest conflict which can be ended in the court. Therefore, a continuous dialogue is needed by reviving the community mediation such as krame dese or bale sangkep as a means of finding an ideal final format which is acceptable to all parties so that legal convergence occurs between the two legal systems in the traditional inheritance practices of the Sasak community.

Keywords: Conflict, Local Law, National Law, Customary Inheritance, Sasak Community

I. Introduction

The political law of the state, which chooses and maintains continental legal traditions in the form of codification and unification,¹ through orthodox legal development strategies characterized by the absolute role of state institutions in determining the direction of legal development in society, ultimately only produces instrumentalist positivist law, in which law becomes a powerful instrument for the implementation of state ideology and programs.² It has the potential to exacerbate the gap between national law and local law that can lead to conflict in society because of the gap between the intentions of the rulers of policymakers and the reality that exists in the realm of citizens' awareness of what is called fair law and what is not law, according to perception and conception of the people.³

According to Ahmad Ali, the main obstacle in the field of law in Indonesia lies in legal reasoning (legal thought), which is still very legal-positivistic. The science of law studied and used as a solution to the crisis is solely a positive law that considers national law as the only law, whereas outside of that, there is no law.⁴ Law is only understood as a law or instrument legitimized by the state and oriented towards legal certainty.⁵ Laws are made only based on pragmatic interests so that the value of truth and justice becomes increasingly blurred.

The hegemony of national law results in local order and supporting institutions being replaced by written legal institutions and agencies so that national law is seen as more important than the norms and local traditional institutions scattered from Sabang to Merauke.⁶ This effort raises new problems related to the disparity between law and justice, as is the phenomenon of "the poor" justice today.

This condition is contrary to the enforcement of local legal norms, which are considered more equitable by the community because it is in line with the laws of the community so that compliance with the law as a norm is not solely due to the imperative of the rules in the form of sanctions, but rather the public's awareness that the law is good to follow. Through its formal aspects, national law is only able to polish fear because of the sanctions it creates.⁷

In general, the national law design, which pivots on the politics of codification and unification, has succeeded in creating a modern legal building. The state has rules that are written and managed rationally, as well as modern justice institutions inhabited by educated professionals who specifically operate codified law. However, the modernity of the legal system is not without problems. On the contrary, the building of law, which relies on the politics of codification and unification, presents its problems at the level of praxis, especially in the context of local communities with their uniqueness and plurality.

To portray the reality regarding the existence of local law amid the hegemony of national law, this study raised the implementation of local traditions in Sasak society, which partially clash with national legal norms in the form of judges' decisions, such as the existence of permanent jurisprudence number 179K/Sip/1961 and number 1589K/Sip/1974 that allowed the daughter and son of an heir are jointly entitled to the inheritance in the sense that the son's share is the

¹ Hilman Syahril Haq Acyadi, Arief Budiono, Sinung Mufti Hangabei, "Management of National Judicial System Control Based on Local Laws: A Case Study at the Mediation Center in Lombok, Indonesia", *Lex Localis: Jurnal of Local Self Government*, Vol. 19, No. 3, (2021), 485-501. [https://doi.org/10.4335/19.3.485-501\(2021\)](https://doi.org/10.4335/19.3.485-501(2021))

² Sirajudin et.al., *Legislative Drafting: Pelembagaan Metode Partisipatif dalam Pembentukan Peraturan Perundang-undangan*, (Malang: In-Trans Publishing, 2008), 7.

³ Soetandyo Wignjosoebroto, *Hukum yang Tak Kunjung Tegak: Apa yang Salah dengan Kerja Penegakan Hukum di Negeri Ini*, dalam Komisi Yudisial Republik Indonesia, *Dialektika Pembaharuan Sistem Hukum Indonesia*, (Jakarta: Sekretariat Jenderal Komisi Yudisial Republik Indonesia, 2012), 12.

⁴ Ahmad Ali dalam Sudjito, *Ilmu Hukum Holistik: Studi untuk Memahami Kompleksitas dan Pengaturan Pengelolaan Irigasi*, (Yogyakarta: Gadjah Mada University Press, 2014), 6.

⁵ Bayu Setiawan, "Penerapan Hukum Progresif oleh Hakim untuk Mewujudkan Keadilan Substantif Transendensi", *Kosmik Hukum*, Vol. 8, No. 1, (2018): 33-54. 10.30595/kosmikhukum.v18i1.2338

⁶ Bernard, L. Tanya, *Hukum dalam Ruang Sosial*, (Yogyakarta: Genta Publishing, 2011), 116.

⁷ Awaludin Marwan, *Satjipto Raharjo: Sebuah Biografi Intelektual dan Pertarungan Tafsir Terhadap Filsafat Hukum Progresif*, (Yogyakarta: Thafa Media, 2013), 282.

same as the daughter's, while in the Sasak community's patrilineal kinship system, Sasak women do not have the right to inherit their parents property.

The difference inheritance concept between local law and national law, become a background of the conflict in the Sasak community which often end up in the court. Based on the case data which has been received and verdicted by the Religion Court, information obtained that at 2014 there are 60 inheritance cases which handled by the Praya Religion Court, while Mataram Religion Court at 2015 there are 21 cases and 10 cases at 2016, which is almost motivated by Sasak women's demands to become the heir based on the *fara'id* law.

There are some previous manuscript which raises the background to the implementation of the traditional inheritance in the Sasak community, such as the text on the Distribution of Inheritance Assets in Sasak Community Traditions written by Syahdan in 2016. In this manuscript, the author describes how to solve the problems related to the distribution of inheritance in the Jago community of Central Lombok. Next, in 2019, there was a text entitled Implementation of Inheritance Distribution according to Sasak Customary Law in Semaya Village, Sikur District, East Lombok Regency, written by Muhammad Mansur and friends. The author describes the privileged position of men in the inheritance distribution mechanism according to Customary Law in Semaya Village, East Lombok. Furthermore, in 2023 there is a manuscript about the Position of Boys and Girls of the Sasak Lombok community in the Distribution of Inheritance Assets written by Wahyu Aolia and friends. In this text, the author describes the position of boys and girls in the system of distributing inheritance according to customary law in Sade village in relation to legal pluralism in the field of inheritance.

This research, beside describing the conflict between local law and national law in traditional inheritance practices in the Sasak community, also aims to formulate conflict resolution so that there is convergence between local law and national law as an entry point in an effort to create a harmonious relationship between law and society, so that national law does not always exist in a vacuum due to its inability to respond to all the circumstances of social life that surrounds it.

II. Research Problems

1. How are the description of local law and national law conflict in the practice of custom inheritance Sasak Community?
2. How are the resolution of local law and national law conflict toward the convergency law practice of custom inheritance Sasak Community?

III. Research Methods

This study used a non-doctrinal paradigm with the type of study being descriptive because it intended to clearly describe various matters relating to conflicts of local law and national law on the practice of customary inheritance in the Sasak community. The approach used in this study was a case approach (statute approach) and a historical approach.

This research was conducted in several areas on the Lombok Island, such as Sade Hamlet, Teruwai Village, Penujak Village, and Bayan Village. The determination of research locations was based on the consideration that these areas still uphold the local wisdom values, especially in terms of customary inheritance. Furthermore, the data needed in the research were collected through library studies, interviews, and observations, and then analyzed qualitatively to answer the problems that were the object of research studies.

IV. Result And Discussion

1. How are the description of local law and national law conflict in the practice of custom inheritance Sasak Community

Conflict in the practice of customary inheritance is motivated by the patrilineal patronage system of the Sasak community, in which Sasak women do not have the right to inherit their parents' property. The concept of inheritance based on jurisprudence, such as the permanent jurisprudence of the Supreme Court that applies to all of Indonesia on November 11, 1961, number 179K/Sip/1961, requires the daughter and son of those who leave an inheritance to be jointly entitled to inheritance, in the sense that the portion son is the same as the daughter. Neither did the Supreme Court jurisprudence on February 9, 1978, No. 1589 K/Sip/1974 on the case of *Inaq Rasini* with *Amaq Atimah*, which eventually became the legal umbrella for Sasak girls to become heirs. It included the Selong District Court decision number 164/P.N.Sel/1982/Pdt, dated December 27, 1982, which emphasized the substance from previous jurisprudence that "women of the Sasak tribe are logically and naturally followed by the same rights and position in law, especially in inheritance law". A similar view also applies to Islamic inheritance laws, which have governed the size of the share between sons and daughters.

The Sade people interpret their sons' position as heirs to the parents' throne (*anak prangge*) so that property in the form of houses, gardens, rice fields, and livestock will be handed down to them. As for property stored in the house, such as jewelry and beads, it will be handed over to daughters.⁸ If there is no son, then the daughter gets the same opportunity to get the inheritance as the son. However, if a family does not have a descendant (*putung*), then the inheritance will fall into the hands of other relatives who are deemed entitled by the head of the family who passed down the property.

By the Sade community, land, such as rice fields and gardens, is seen as a place to make a living. Thus, for them, building a house on productive land is done if only there is limited land. Moreover, this area does not have soil fertility in the northern regions of Lombok. Therefore, they are accustomed to working in groups to build houses on land that is not productive enough. Not surprisingly, the Sade settlement is on a hilly plain with quite sharp contours because the place where the house was built follows the existing land contour.⁹

In addition to the Sade hamlet, the Truwai community also adheres to the principle that women do not receive an inheritance from their dead parents. It is because the daughter, after marriage, is considered to leave her family and move into her husband's family. For that, she is allowed to bring jewelry items in gold or silver in the form of stud earrings/earrings, necklaces, and bracelets.

Likewise, the Penujak community also considers that descendants, especially sons, are so important in a family because, besides being considered as successors to descendants, they also have greater responsibilities compared to daughters, as seen in various family events and everyday life. Besides, sons are also considered as successors or bearers of family names. Conversely, a daughter, if later married, will follow her husband's family, and the child who is born will also carry her husband's surname so that married daughters are deemed to be releasing her original family. Also, it is considered the end of parents' duties for their daughters because they have become part of their husband's family. Therefore, girls in this village only inherit a property in the form of goods or jewelry from generation to generation from their mother or grandmother, in addition to the provision of inheritance in the form of modest amounts of money intended as provisions for wading through the household.

The Bayan community also views that sons have a more priority position in terms of the distribution of inheritance (*nyeyon melembah*), given the magnitude of their responsibility in

⁸ Interview with kurdap or head of Sade sub-village On February 8, 2017.

⁹ Pancawati Dewi, "Peran Perapian dalam Pembentukan Ruang Baru di Sasak", *Dimensi Teknik Arsitektur*, Vol. 33, No. 1, (2005): 94-98. <https://doi.org/10.9744/dimensi.33.2.%25p>

providing for their families later through the management of inherited property so that the inheritance received by girls is only as additional to the welfare of his family.¹⁰

The above reality describes that the principle of customary inheritance that places sons as “*anak prangge*” (heirs to the parents' throne) is interpreted as norms that can hinder women's civil rights to become heirs. Therefore, conflict outcomes in the practice of customary inheritance in the Sasak community can be latent. It can be in the form of defiance of women against local legal provisions, or vice versa, by those who still uphold local law against jurisprudence that equalizes while allowing girls to inherit people's property. Such conflict can develop the escalation into a manifestation of conflict due to the court's opening of conflict resolution efforts on the practice of customary inheritance in the Sasak community.

For example, in April 2018, the Praya Religious Court handled inheritance cases based on case number 0422/Pdt.G/2018/PA-Pra. In their claim, the plaintiff (sister) wanted her civil status to be recognized as an heir, as her brother becomes the defendant. Likewise, the Selong Religious Court in April 2018 also handled inheritance case number 353/Pdt.G/2018/PA.Sel, in which the sister (the plaintiff) begged the judges to designate her as heirs based on *fara'id* law (Islamic law).

2. How are the resolution of local law and national law conflict toward the convergency law practice of custom inheritance Sasak Community?

The structure of Indonesian society which is big seems impacting the law that applied in Indonesia, that is the plural law system, that is a condition that has more than two law system in the same area. The law in the colonial era has been still existed, including the Local law and religion law which is admit and applicable, beside that government try to do the unification law with centralistic to work the national law.¹¹

The strengthening attack of this model approach show centralism law make the national law Performance roles so big and limited the awareness of local wisdom law which connects from the way social order and the ideal move which exists in the society. Moreover under the low thinking as the society make the national law as one or comprehensive way in the managing people in the realization of custom inheritance in the society.

Customary inheritance laws are believed and carried out by certain tribes in Indonesia, whose legal norms are mostly unwritten but are firmly adhered to by communities in certain tribes in an area. No matter how modern the urban community in Indonesia, there are events that they will still return to old customs,¹² including when it comes to inheritance matters because every humans will experience legal event that is there is death.¹³ This law is an important part from family law,¹⁴ in practice very influenced by the pattern of kinship and social structure.

In the practice of inheritance in Indonesia, there are several forms of inheritance based on local law. Some prioritize the lineage of the father, mother, or take the two groups. In Minangkabau, for example, men do not become heirs to *pusaka tinggi* (high heirlooms). Father only bequeaths or gives away his search treasure to his children. Meanwhile, in Tapanuli, like Lombok, women do not become heirs. In Sabu, a daughter inherits from her mother, while a son from his father. In Makassar, sons and daughters are the same. There, sons receive property in the form of rice fields and gardens, while daughters receive houses, jewelry, or women's equipment. If not the same, then the property will be sold and divided equally.

¹⁰ Interview with Raden Madikusuma or head of Byam village on January 21, 2017.

¹¹ Hilman Syahril Haq, Hery Sumanto, “Mengukuhkan Eksistensi Hukum Adat dalam Sistem Hukum Indonesia”, *Yustisia Merdeka*, Vol. 2, No. 2, (2016): 15-26.

¹² Sulistyowati Irianto, *Pluralisme Hukum Waris dan Keadilan Perempuan*, (Jakarta: Yayasan Pustaka Obor Indonesia, 2016), 13.

¹³ Aisyah, Novia Alexia, “Keberadaan Hukum Waris Adat dalam Pembagian Warisan pada Masyarakat Adat Batak Toba Sumatera Utara”, *Mizan: Jurnal Ilmu Hukum*, Vol. 11, No. 1, (2022): 1-8. <https://doi.org/10.32503/mizan.v11i1.2323>

¹⁴ Eman Suparman, *Hukum Waris Indonesia dalam Perspektif Islam, Adat, BW*, (Bandung: Refika Aditama, 2018), 24.

Seeing the diversity of inheritance practices in Indonesia, the national law seminar in 1963, which produced the basis and principles of the National Law, concluded that "Judges guide the development of unwritten law through jurisprudence towards the uniformity of law to the broadest, especially in the field of family law toward the parental system". The seminar results were then emphasized at a customary law seminar in Yogyakarta in 1975 on the decision on customary law in jurisprudence, which required customary family and inheritance customary law to be developed towards parental law, where sons and daughters were placed equals.¹⁵

According to Yahya Harahap, in the development of customary law in Indonesia there have been important changes in inheritance law, especially after the Supreme Court decision in case number 179K/Sip/1961. Thus, this jurisprudence has given birth to a new customary law of inheritance which is considered to be a far step from the old and pure customary law values.

Based on this idea, the role of judges who tend to appear as legislation is endeavored to become a lawmaker, namely a mouthpiece for propriety, justice, public interest, and public order so that there is legal uniformity regarding the principle of national inheritance toward parental law through jurisprudence with still consider about the low value which live in the society is so close by legislation rules no 48 2009 about the power of justice. In fact the judges in the process of law is not yet based on the progressive thinking while by the thinking of law positivity-legalistic with looking at law as only a legislative rule and only to reach to get the exact law with with sacrifice the social justice. However the local rules has different way to seen and meaning about justice and the use of law.

It is fitting to say that customary law is a collection of legal norms that have different reason from modern law. This law is the norms and the system that is relatively not oriented to Western law. Therefore, it is not excessive if many people believe in customary law as the original law of Indonesia, which was born from the values and outlook on life of the people in the archipelago in the struggle for life since ancient times, which continues to carry over into the dynamics of life to the present. It then led some parties to consider that customary law has the potential to become a fundamental foundation for the development of the Indonesian legal system that reflects Indonesia's character.¹⁶

Mapping the inheritance system that applies to the Sasak community is become interesting because of the unique cultural characteristics and customs that have been passed down from generation to generation and were formed through the processes and dynamics of a long history.¹⁷ Philosophically, the principle of customary inheritance of the Sasak community places the position of sons as *anak prangge* (heirs to the throne of parents). It departs from tradition, where men, after completing the dawn prayers or coming back from *santren* (mosque), go to earn a living by working on their gardens or rice fields. Meanwhile, women are preoccupied with cooking activities to then deliver them for their husbands who are working. Therefore, inheritance in the form of land tends to be passed down to their sons, bearing in mind that women's obligations are to take care of the household, but not on the contrary, take the husband's role as head of the family.¹⁸

Likewise, the inheritance of houses handed down to sons is more due to the large responsibility they have to protect their younger siblings' lives later. For example, if their sister is divorced, she has the right to return to his original home. Therefore, the inheritance in the Sasak community is called heirlooms as the case of the main house is symbolized as "*tolang daeng papuq baloq*", which is the ancestral rib. It means that even though the inheritance is divided, it is still

¹⁵ Edo Hendrako, "Hak Waris Anak Perempuan terhadap Harta Peninggalan (Studi Kasus Putusan MA RI No. 4766/Pdt/1998)", *Lex Privatum*, Vol. 3, No. 1, (2015): 84-98.

¹⁶ Agni Udayati et.al., *Mohammad Koesno: Dalam Pengembangan Gagasan Hukum di Indonesia*, (Jakarta: Epistema Institute, 2013), 2.

¹⁷ Lalu Supriadi Bin Mujib, "Revitalisasi Hukum Waris Islam dalam Penyelesaian Kasus Sengketa Tanah Waris pada Masyarakat Sasak", *Ijtihad*, Vol. 19, No. 1 (2019), 67-87. <https://doi.org/10.18326/ijtihad.v19i1.67-88>

¹⁸ Interview on 15th February 2017, lalu Safrudin/academics and the Sasakness traditional figures.

considered inseparable, in the sense that it remains seen as a unifying tool among heirs,¹⁹ as is the case in several other areas that adhere to a male majority inheritance system.²⁰

Gender equality in the Sasak community is interpreted as an attitude of placing women in a special position as a representation of the earth's existence. Male and female relations are interpreted by the clear division of tasks with the realization that justice does not have to be equal. It is evident, for example, in the Bayan community in the context of the inability of a husband, who acts as the bearer of custom, to take over his wife's duties in carrying out custom. Likewise, on the other hand, a wife is also not permitted to take over the husband's specific duties as a bearer in Bayan custom so that the terms "*inaq lokaq* and *amaq lokaq*" were born.²¹ Therefore, the concept of justise in the inheritance law is not based on the equal division among beneficiaries but rather on the assignment of their obligations or duties.²²

In practice, women are often perceived as weak and helpless and often underestimated in every decision. Their opinions and suggestions are often ignored, even put aside. Such treatments are often found in social life in many places. Nevertheless, without women, all things cannot be adequately realized, and there will be no happiness on this earth.

Women in the concept of *Gumi Nine* presents the philosophical existence of the earth. The existence of the earth is considered necessary because, without it, all living things would not exist in the universe. Without the earth, there are no trees to grow, without trees, there will be no place for birds to perch, without trees, there will be no water flowing into the fields, and, of course, in the end, there will be no life, including human life.

As mothers and wives, women have an extraordinary role in raising and educating children, taking care of all family needs, and being responsible for their husbands. If women are not involved in their strategic roles, then how husbands can ensure that their children are well cared for and educated by their mothers, how husbands can know how hard the wife's struggle to manage the needs of the family, and how the husband can respect his wife's responsible attitude at home stairs. Therefore, in the perspective of the Sasak community's customary inheritance, the principle of balance between the position (role) and the responsibilities of the parties will largely determine the type of assets to be inherited so that the inheritance value received by the heirs is proportional to the amount of responsibility or obligation attached to each other.

The position of sons in the Sasak community is so vital because parents consider sons to be the successors or bearers of family names, and conversely, they assume girls who later marry will follow their husband's family, including the child they are born with, will also carry her husband's name. Therefore, married girls will give up their real family names. It is also considered the end of the parents' task in their daughters because they have become part of her husband.

Such a concept is also in harmony with the word of God in the An-Nisa verse 34, which states, "men are in charge of women by [right of] what Allah has given one over the other". Based on this verse, it appears that male leadership is manifested due to their strengths and efforts to make a living.²³ This shows that there is a strong interaction between sharia and custom,²⁴ as in the expression in the Sasak community "*religion beteken lan betakaq adat*" that the practice of customary law must be carried out with the hope of Allah's approval. So Islamic Law functions

¹⁹ Interview on 15th February 2017, lalu Safrudin/academics and the Sasakness traditional figures.

²⁰ Khisni H.A, *Hukum Waris Islam*, (Semarang: UNISSULA Press, 2017), 21.

²¹ Raden Sawinggih et.al., *Dari Bayan untuk Indonesia Inklusif*, (Mataram: SOMASI NTB, 2016), 176.

²² Arbanur Rasyid, Rayendriani Fahmei Lubis, Idris Saleh, "Contestation of Customary Law and Islamic Law in Inheritance Distribution: A Sociology of Islamic Law Perspective", *Al-Ahkam*, Vol. 34, No. 2 (2024): 419-448. <https://doi.org/10.21580/ahkam.2024.34.2.20843>

²³ Bustami Saladin, "Implementasi Linguistik tentang Gender dalam Al-Qur'an terhadap Hukum Islam", *Jurnal OKARA*, Jil 5, No. 1, (2011): 32-44. <https://doi.org/10.19105/ojbs.v5i1.499>

²⁴ Fikri, Wahidin, "Konsepsi Hukum Waris Islam dan Hukum Waris Adat: Analisis Kontekstualisasi dalam Masyarakat Bugis", *Al-Ahkam: Jurnal Ilmu Syariah dan Hukum*, Vol. 2, No. 2, (2016), 193-204. <https://doi.org/10.22515/alahkam.v2i2.500>

as a control and value for social change.²⁵ Sakirman concluded that Islamic inheritance law has not been fully implemented in Indonesia because the society is still influenced by customary inheritance law which also contains Islamic values.²⁶

The difference in inheritance regulations regarding the position of sons and daughters between local law and national law has given rise to the expression in the Sasak community "other tutuk, another jajak" just like different villages have different customs.²⁷ Therefore, to maintain their position as heirs, Sasak women also choose to resolve their inheritance conflicts through litigation mechanisms, because the court is considered to be able to protect their civil rights as heirs.

In April 2018, the Praya Religious Court handled an inheritance case with case number 0422/Pdt.G/2018/PA-Pra. In his lawsuit, the plaintiff wants his civil status to be recognized as an heir, like his brother who is the defendant. Likewise, the Selong Religious Court in April 2018 also handled inheritance case number 353/Pdt.G/2018/PA.Sel in which the plaintiff asked the panel of judges to determine him as an heir based on *fara'id* law.

The traditional inheritance law of the Sasak community actually provides an opportunity for girls to have the same position as boys with the condition that if a family only has girls, then the girls will get the full inheritance or inheritance from their parents. Likewise, if a family has several brothers and sisters, the daughters are not married, then the daughters will also receive an inheritance from their parents so that when their parents die, the daughters can continue their lives with or without any hassle of his brother.

Today, there is a paradigm shift in society, along with the increasing understanding of Sasak women about their civil rights as heirs. Thus, a means is needed to dialogue the issue on an ongoing basis, namely by utilizing community mediation seperti *krame desa* or *bale sangkep* until a synthesis process can produce a final format that benefits all parties based on the values of fairness and legal usefulness. In this context, it shows that the social conditions of the legal environment of the group are not static, but are continually changing due to internal and external influences, which ultimately change the behavior of community members and the demands demanded by the common interest, especially responses on matters relating to the common welfare.

In general, the cultural transformation will go through four stages: *first*, the socialization of knowledge (*al-ma'rifah*) about the changes to be made; *second*, the internalization of attitudes (*al-tawajjuh*) regarding behavior and courage to make changes; *third*, individual behavior implementation (*suluk al-fardi*) as the seeds of action for change; and *fourth*, is group behavior (*as-suluk al-jama'i*) to implement the change at the level of the general public. Therefore, to obtain the final format of the process of cultural transformation, it certainly takes a long time so that the effort that can be done is to always discuss the problem through various forums, including community mediation. At the same time, this effort is an attempt to preserve the *Soloh* tradition (deliberation) in the Sasak community that is the existences and becomes weak because there is assumption which developed in the society that the justice is the best place to fix the problem. Therefore it is not that doubtful if many justice has a lot case including the cases which arise as an impact from the implementation of customs in the society. For this case Ade Saptomo seen that in the social life, the principle of kinship is the traditional institutions which was used in fixed the conflict and the principal of deliberation dan consensus cannot deny is one of the traditional heritage of Indonesia, but it cannot be developed naturally.²⁸

²⁵ Hani Sholihah, Nani Widiawati, Mohd Khairul Nazif bin Hj, awang Damit, "Reinterpretation of Justice in Islamic Inheritance Right Based on Gender", *Jurnal Al-Adalah*, Vol. 21, No. 1 (2024): 101-124. <http://dx.doi.org/10.24042/adalah.v21i1.21256>

²⁶ Sakirman, "Konvergensi Pembagian Harta Waris dalam Hukum Islam", *Jurnal Al-Adalah*, Vol. 13, No. 2, (2016): 155-164. <http://dx.doi.org/10.24042/adalah.v13i2.1853>

²⁷ Interview on 15th February 2017, lalu Safrudin/academics and the Sasakness traditional figures

²⁸ Ade Saptomo, *Hukum dan Kearifan Lokal: Revitalisasi Hukum Adat Nusantara*, (Jakarta: PT Gramedia Widiasarana Indonesia, 2001), 95.

There are some principle which identified as the basic for fixing the conflict as deliberation and consensus in the Sasakness society, They are (1) The principle of divinity and self control (*betegel leq reden neneq*) In finish the conflict must be based on the spirit to do The God's command, It Whatever the results in finishing of the conflict Must be done with sincere/willingness. (2) The principle of equal rights and mutual rights (*doe sopoq, bareng ngepe*) In the completion of conflict It is not allowed to do the gender discrimination, Social status, Or even age because all people has the same right and must be treated in the same way; (3) The principle of harmony and kinship (*awak sopoq, saling peririq, saling angkat, saling ajinin, and saling sedok*) in the completion of conflict it is only to create the harmony and peace in the society; (4) The principle of deliberation and consensus (*soloh*) It is the best decision which created in the process up mediation based on the results of deliberation and consensus which based on the value of local wisdom; (5) The principle of justice (*endeq naraq bine kire, tarik nyacap*), it means that result up decision must be fair and implement it based on each right.²⁹

To institutionalize the Local wisdom value In the compassion of conflict as the deliberation and consensus, so the government off West Nusa Tenggara publish The local regulation number nine 2018 about Bale mediasi,³⁰ which can be used as the way for the success IT to strengthen the existence of custom inheritance through the consensus which going to the general local need.

The mediation community institution is one of the resolution conflict which can minimize The hegemony of national law, remember the implementation of local wisdom value it should be followed by the use of media completion custom conflicts as the relation between the rules of nasional law which can be categorized as material with justice as the formal instrument, therefore the existence of custom inheritance is not marginal through the decisions of judges (jurisprudence) which tends to have a positivistic character (law funnel).

On the other hand, social control is also important to increase public legal awareness. According to Koentjaraningrat, social control in society can be carried out by strengthening citizens' belief in the goodness of certain social rules.³¹ This effort can be done by optimizing local subject in various educational institutions, both formal and informal because friction values in society is one of the factors that contributes to conflict. Likewise, for example, in the historical framework of Lombok, which until now has not been compiled to an appropriate level as local content for the next generation in getting to know the history of the region.³²

The weakening of the local law position is partly due to the assumption that local law is very traditional and cannot reach the era of development (globalization and technology). The implications of the politics of law are also felt in solving problems in communities that deny local law, which is more relevant.³³

Mochtar Kusuma Atmadja assured that the customary spirit could not be left as a pioneering empire of the national legal system. In short, custom will never die because it always inspires the development of the social life of its people.³⁴ Besides, local law has its style compared to national law. These three characteristics are traditional, changeable, and adaptable qualities. These characteristics show that although local law retains its traditional values, at the same time, it can accept changes that affect it. Herein lies the flexibility of local law, which is essential to be taken into account.

²⁹ Hilman Syahril Haq, Achmadi, Sinung Mufti Hangabei, Arief Budiono, "Community Mediation-Based Legal Culture in Resolving Social Conflict of Communities Affected by the COVID-19 Pandemic in West Nusa Tenggara Indonesia", *Studia Iuridica Lublonesia*, Vol. 31, No. 2 (2022): 1-22. <http://dx.doi.org/10.17951/sil.2022.31.2.11-32>

³⁰ Hilman Syahril Haq, *Mediasi Komunitas sebagai Alternatif Penyelesaian Sengketa*, (Klaten: Lakeisha, 2020), 97.

³¹ Koentjaraningrat dalam I Dewa Made Suartha, *Hukum dan Sanksi Adat*, (Malang: Setara Press, 2015), 21.

³² Lalu Djelenga, *Sejarah Lombok*, (Yogyakarta: Lenggge, 2012), 2.

³³ Lastuti Abubakar, "Revitalisasi Hukum Adat sebagai Sumber Hukum dalam Membangun Sistem Hukum Indonesia", *Jurnal Dinamika Hukum*, Vol. 13, No. 2, Mei, (2013): 319-331. <https://doi.org/10.20884/1.jdh.2013.13.2.213>

³⁴ Mochtar Kusuma Atmadja dalam Shidarta (et-al), *Mochtar Kusuma-Atmadja dan Teori Hukum Pembangunan*, (Jakarta: Epistema Institute, 2012), 178.

Paper believes that in the context of law tradition has a parallel function which legislation or the creation of law to give order to the society. Therefore there is no contradiction between tradition and they just relate to the function and some of the tradition has been developed become the habit which followed by a community of legislation as one of the positive law system in the modern country it means the positive law which is rational can create based on the tradition because inside of those there is a same social function to make and take care the social order³⁵

However the existence of Local law in the Development national law should we should be put as the One perspective and unity not contradictory with the basic norm and doesn't have effect contradictory with the rules of law because basically the effective law is law which Match with the culture and the pattern of the society has said on the rules of legislation tap MPR nomor 11 / MPR S / 1960 Which clearly and firmly give an explanation about position and Local local rule National hello phone then founding it is as long as not limit the development of prosperous and very society as the basic.

V. Conclusion

The local law and national law conflict in the practice of custom inheritance in the sasakness society is motivated by some of the judges decision which eliminate the concept of custom inheritance in the Sasak community which has patrilineal character. Therefore it is very important to discuss some issue about inheritance continuously through mediation community until the final format can be a cheap which can kill the justice and the using of law in the Sasak Community. In addition of time the optimalization education which base on the local wisdom value become a part of the solution conflict to make the law awareness of society also to approach the society and local law because the movement of value caused by the changing of era can be a factor that causes some conflict in the field of custom inheritance.

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³⁵ Paper dalam Aidul Fitriciada Azhari, *Tradisi Bernegara dalam UUD 1945*, (Yogyakarta: Genta Publishing, 2014), 11.

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