

## CHAPTER III

### RESULTS AND DISCUSSION

#### A. Research Results

This research presents five cases from different respondents. Those respondents had met the degree requirements given in the research methods. They are daughters from Chinese-Indonesian family who lived in Semarang. The respondents also come from a family who were not from a mixed marriage with other ethnic groups and their households have both daughter and son. Lastly, the respondents were in inheritance situation from their parents; hence, there were inter-generation legacy transfer in their family.

The respondents in this research are the second, third, fourth, even fifth generation of the Chinese migrants who came to Indonesia and lived in Semarang. They still understand most of the Chinese culture and celebrate Chinese feast; even though their lifestyle and paradigm have been affected by local culture. They speak Indonesian with the dialect of Chinese-Semarang. They do not live exclusively in a Chinatown, but they live across Semarang. These people fall into the category of *Peranakan* Chinese according to Leo Suryadinata.<sup>93</sup>

Since no one understands the Chinese customary law as a whole, this study will be analyzed based on the literature study and the interview's results. Given that the respondents were not willing to expose their name, their name will be coded. Here are the data and summary of each case:

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<sup>93</sup> Leo Suryadinata, 1992, *op. cit.*, p. 89.

## 1. Respondent 1

### a. Respondent Identity

Name : A  
Age : 53  
Religion : Buddha  
Last Education : Chinese school (equal to SMP)  
Occupation : Office employee  
Generation No. : 2<sup>nd</sup>  
Children No. : 4<sup>th</sup>  
Total Sibling : 5 (3M, 2F)  
Racial Group : Hokkien  
Inheritance Year<sup>94</sup>: 1991

### b. Interview Result Summary

A is a daughter from a family which still upholds the old Chinese tradition. A did not get any legacy when her mother passed away. Her mother had four lands and a living house, which were distributed among the brothers. The oldest brother got the living house, and the two brothers got one land for each. The rest two lands were sold and the money was distributed among the sons. A admitted that she did not know much about the distribution of rest of the legacy, such as saving money and gold.

The tradition believes that man is superior to woman. Given that A had been indoctrinated by the tradition, she accepted her mother decision to

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<sup>94</sup> Inheritance year is the year where the last alive parent passed away.

distribute the legacy only to her brothers. A and her sister did not obtain any share as they were considered as becoming their husband's family.

## 2. Respondent 2

### a. Respondent Identity

Name : B  
Age : 55  
Religion : Catholic  
Last Education : Diploma 3  
Occupation : Marketing manager  
Generation No. : 5<sup>th</sup>  
Children No. : 4<sup>th</sup>  
Total Sibling : 5 (3M, 2F)  
Racial Group : Hokkien  
Inheritance Year : 2008

### b. Interview Result Summary

B is a daughter from a family that gave the legacy of the living house to the oldest daughter. While her parents were still alive, her oldest sister took care of them. Therefore, after her parents passed away, the siblings decided to give the parent's house to the oldest sister. Additionally, her oldest sister was considered economically poor among the siblings.

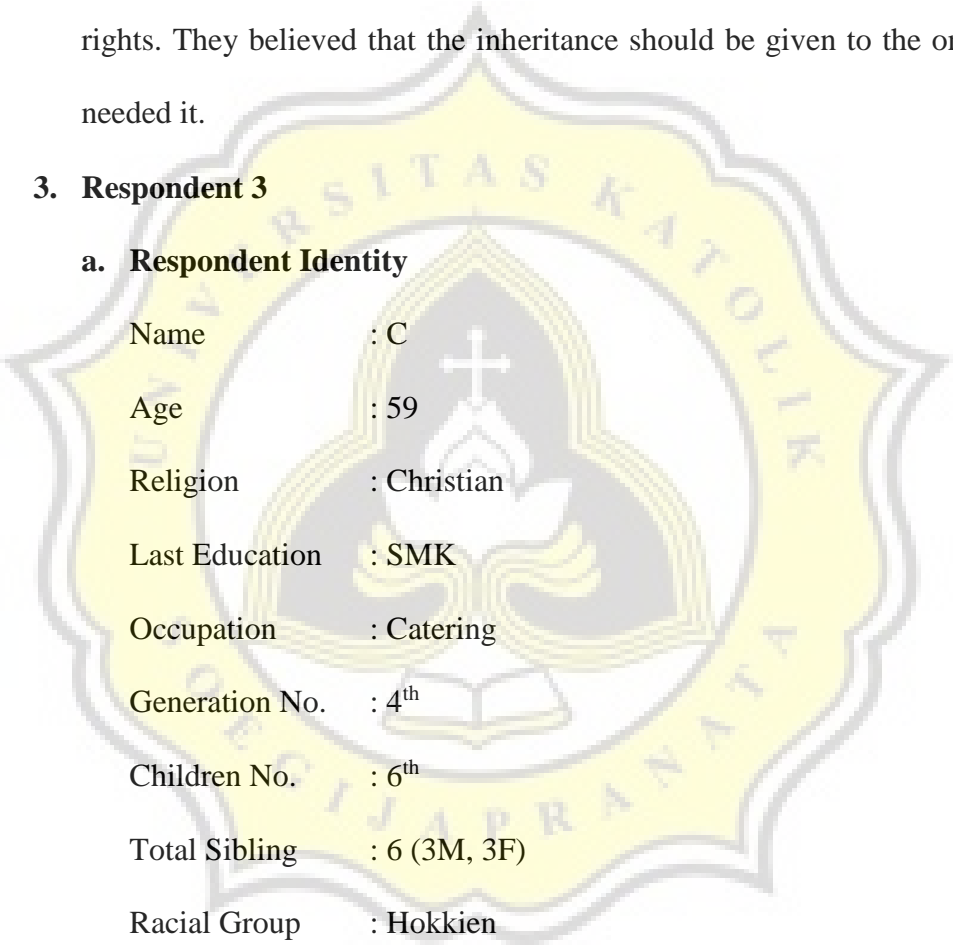
B's parents had never left any testament to the children. Hence, the children decided by themselves how to distribute the legacy. In addition to the living house, there were gold and bank saving. The gold, which stored

in the house, was taken by the oldest sister. While the bank saving was used to take care of her mother, such as buying pampers and medicines.

Since B's family is already the 5<sup>th</sup> generation, B admitted that she did not familiar with Chinese custom that positioned the women inferior to the men. She said that her siblings and she did not really dispute inheritance rights. They believed that the inheritance should be given to the one who needed it.

### 3. Respondent 3

#### a. Respondent Identity



Name : C  
Age : 59  
Religion : Christian  
Last Education : SMK  
Occupation : Catering  
Generation No. : 4<sup>th</sup>  
Children No. : 6<sup>th</sup>  
Total Sibling : 6 (3M, 3F)  
Racial Group : Hokkien  
Inheritance Year : 1994

#### b. Interview Result Summary

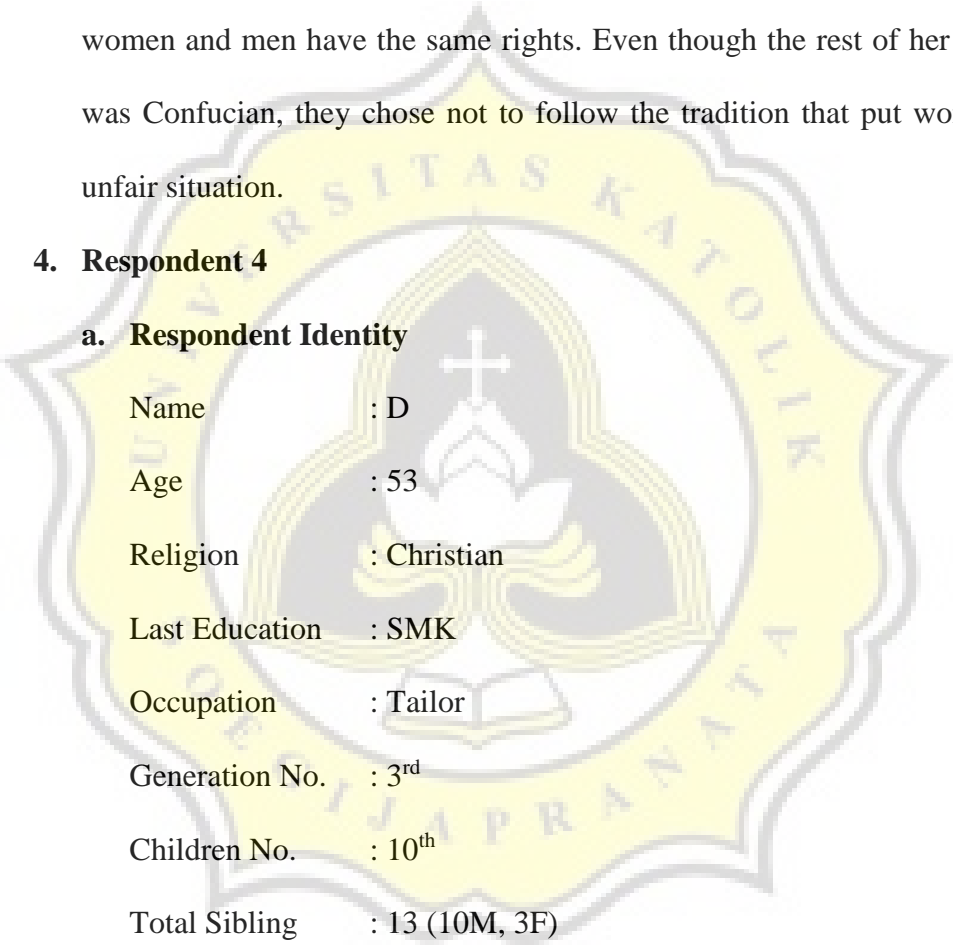
C is a daughter who came from a family that did not use the Chinese customary law anymore. The family chose to use the regulation in the civil code. The legacy was distributed justly among the children. Before her

mother passed away, she distributed all of the jewelries to her children. Since her mother had never left any testament, after her mother had passed away, the children decided to sell the living house and distributed the money among the six siblings in same amount.

The family felt that they lived in Indonesia now; and considered that women and men have the same rights. Even though the rest of her family was Confucian, they chose not to follow the tradition that put women in unfair situation.

#### **4. Respondent 4**

##### **a. Respondent Identity**



Name : D  
Age : 53  
Religion : Christian  
Last Education : SMK  
Occupation : Tailor  
Generation No. : 3<sup>rd</sup>  
Children No. : 10<sup>th</sup>  
Total Sibling : 13 (10M, 3F)  
Racial Group : Hokkien  
Inheritance Year : 2012

##### **b. Interview Result Summary**

D is from a big family with a total 13 siblings. Her family still believed in the Chinese tradition which its tradition contains patriarchal values and

norms, such as the son would take a wife to foster household, while the daughter would be take into another household after married. Therefore, only a son was considered as a successor.

After the father passed away, the mother made testament for the children. The distribution was about 70% for each heir and 30% for each heiress. For the three daughters, they got a four hectares land in Ungaran as part for their testament. In 2011, a year before the mother passed away, D's brothers asked the mother to sell the heiresses' land allotment in Ungaran and distribute the money among the sons because the sons needed some economic support at that time. Therefore, when the notary pronounced the testament after her mother had passed away, the heiresses' land was already sold. D stated that she did not know which one of her brothers came up with the idea to sell the daughter's land. She said that all she knew was all of her brothers agreed to that idea.

## **5. Respondent 5**

### **a. Respondent Identity**

Name : E  
Age : 63  
Religion : Prefer not to say  
Last Education : Bachelor degree  
Occupation : Helping in the office  
Generation No. : 2<sup>nd</sup>  
Children No. : 6<sup>th</sup>

Total Sibling : 8 (5M, 3F)

Racial Group : Hokkien

Inheritance Year : 1998

#### **b. Interview Result Summary**

E's parents were Chinese migrants who came to Surabaya. Therefore, the Chinese tradition in her family was still strong. In the interview, E told the writer about gender inequity in her family. After getting female first and second born, her parents were regret and sad. Fortunately, they got five sons after that. The daughters were situated as subordinate in the family. Their job was cooking and taking care of household matters. Different treatment also applied between the grandchildren from daughter's line (outside grandchildren) and son's line (inside grandchildren). For example, since her parents had a quite big company, they gave a job for the grandchildren. While the inside grandchildren got position where they could be decision-maker, the outside grandchildren got position as field staff.

E's father passed away in 1997, while her mother passed away in 1998. After her parents had passed away, discussion on legacy distribution occurred among the sons without the present of the daughters. When the legacy distribution pronounced, the legacy, including money, cars, lands, and jewelries, was distributed fairly among the eight siblings. However, apparently their brothers hide an amount of legacy from their sisters, including family assets in abroad and company's shares. E found out about it from the company's staff.

As explained in the previous chapter above, women do not have the rights to inherit in the Chinese customary law. However, the research has shown that there was a shift in inheritance distribution in the Chinese-Indonesian family. In some cases as told by the respondents in this research, Chinese-Indonesian daughters also get the rights to inherit. This research looks into the legal system implemented in vertical processes of wealth distribution between generations, especially in legacy distribution, and examines gender differentiation within the household and its recent changes. The differentiation makes some unfair situation for women; hence, women have their own strategies in facing those conditions.

## **B. Discussions**

### **1. The Legal System Undertaken and Implemented to the Chinese-Indonesian Women**

Research, which examines subjects without distinguishing their identities, will be trapped in experience generalization. It is important to examine each experiences of the respondents, as they have their own unique experience, which lead them to choose a strategy and make decisions from their own perspectives.

The research has found that there are variety of legal systems implemented to the Chinese-Indonesian women in distributing legacy. The first is civil law, which is Indonesian Civil Code. Indonesian Civil Code regulates inheritance in the Book II about property. The regulation states an amount of fair share between a man and a woman. The second is Chinese customary law. In the Chinese customary law, a woman does not have rights to inherit legacy. The



legacy is given in a different form, namely a ‘gift’ which the value is very less than the legacy itself; the ‘gift’ is delivered when she marry.

In addition to those legal systems, there are also families who use both system. It can be indicated from the using of public notary or testament, while still upholding the value of Chinese custom. There are also families who do not use neither Civil law nor Chinese customary law. The families make their own agreement without regarding to both systems. Here is the table of legal system implementation in five cases:

Table 1. Legal System, Legacy Distribution, and Testament Implemented

Participant	Legal System	Legacy Gotten	Parent’s Testament
A	Chinese customary law	None	Oral will
B	Neither both	Legacy given to the oldest sister	None
C	Civil law	Fair distribution among siblings	None
D	Both	Legacy for the daughters was sold by the brothers	Notarized will
E	Both	The daughters got some portion of legacy, but the brothers hide an amount of legacy from their sisters.	None

Source: Processed Data, 2016

There are families who still uphold their old tradition, even though they are far from their land of origin. In those families, usually the Chinese customary law is undertaken and implemented in inheritance matter. As in A case, she was the 2<sup>nd</sup> generation of Chinese migrants to Indonesia; naturally, her family was keener for their tradition. Therefore, the family chose to distribute the legacy

among the sons exclusively in accordance with the Chinese customary law. As

A stated:

*Dulu kan mamah punya tanah dimana-mana tapi aku sama adikku ndak dapet bagian. Jadi dulu ya yang dapet ya cuma kokoh-kokohku aja. [My mother used to have several lands, but my sister and I did not get any share, only my brothers who got the share.]*

The experience of A was an example of a daughter who did not get any legacy share due to the Chinese customary law applied to her family; therefore, her mother had decided that the legacy only distributed among the sons. As A had been indoctrinated by the tradition, she just kept silent and accepted her mother decision to distribute the legacy only to her brothers.

The writer also finds out that there are some cases where the families do not completely implement the Chinese custom. In these cases, women are given rights to obtain legacy as well, even though their parts are not as big as their brothers are. In D case, the brothers did not consider their sisters as heiresses. The brothers persuaded the mother to sell the legacy share of their sisters and only distributed the small amount of money among them. The distribution of money was 70% for each heir and 30% for each heiress. The reason for not delivering D and her sisters' legacy was her brothers needed money so much at that time. Nevertheless, even after the mother has passed away, her brothers had not returned her legacy share. D admitted that:

*Tapi sesudah mami ndak ada uang itu ndak dikembalikan kita. Harusnya kan mereka ngerti to wong itu warisane kita. Harusnya mereka ngembalikan kita. Tapi mereka malah 'itu kan waktu mami, itukan keputusan mami sing punya kan itu mami semua'. [However, after mother has passed away, they did not return our money. They were supposed to know that the money was our legacy share. They were supposed to return it to us. But, they said 'It was mother. It was mother's decision'.]*

D and her sisters tried to confront her brothers and asked them to return their shares. Before coming to her brothers, she asked for advice about her rights to the notary who pronounced the legacy. However, the notary suggested her to give up instead.

In fact, there is a regulation for the case where the parents gave their child's share as a gift or as a will. In the Indonesian Civil Code, it is known a principle called *legitieme portie* that regulates that the heirs should get absolute portion, which cannot be reduced, even by testament from the decedent. Article 913 of the Indonesian Civil Code states that the decedent cannot dispose the legal share of the heir as a gift during his lifetime or by last will. This means that the daughters actually can ask for revocation any testament that violates her rights. She also can claim a reduction for every distribution of inheritance that lessens her rights.

A research of Gender Difference in Inheritance Law gave explanation about the family whom the parents pass away without leaving any will:

It is the custom. It isn't absolutely on the ground that sons rather than daughters support their aged parents. For example, if a family has three sons, the three sons will divide among themselves the property left over by their parents. Even if a daughter lives in the same village after marriage and shares the responsibility of taking care of the aged parents, she cannot join the sons to inherit the property. ... The practice is mainly based on the custom that values sons more than daughters.<sup>95</sup>

From the statement above, it can be seen that when the parents pass away and do not leave any testament, the sons will divide the legacy among themselves.

Even though the daughters have taken care of the parents, she still cannot join

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<sup>95</sup> Heather Xiaoquan Zhang, *loc. cit.*, p. 266.

her brothers to inherit the legacy. In its development in Indonesia, brother has been starting to consider his sister. It can be seen from the case of E.

As in E case, her sisters and she still got a portion of legacy, but it was less than their brothers. Her brothers had meeting among them and secretly hide some legacy from their sisters. E said that:

*Waktu orang tua meninggal, warisan dibagi. Sing perempuan taune dibagi adil rata orang 8, tetapi sebenere ada yang disembunyikan. Anak sing perempuan sebenarnya tau, tapi kami diem. Kita ndak terima, tapi ya ndak berani ngomong. Itu kan papah yang kerja, wong kita sama-sama anak. [After my parents have passed away, the legacy was distributed. The daughters thought that the legacy was distributed fairly among eight siblings, but actually, there was some legacy hidden. The daughters actually knew about it, but we had no courage to speak up. It was father's work; we are all his children.]*

Furthermore, E also stated:

*Ndak ada wasiat sebelum e. Ya nggak tau ya. pokok e pas mbagi itu itu ya kita punya harta segini, mobil segini. Pokok e diliat nilainya berapa terus dibagi. Nilainya sama. Tapi sebetul e masih ada saham. Masih ada kekayaan di luar negeri. Itu nda disebutke di situ karena mereka berpendapat yang kerja keras mereka berlima anak laki itu. Jadi kalau dibilang dibagi 8 secara adil ya bagi kami itu ndak adil. [There was no testament before. I do not know, at the time of distribution, it was stated as we have properties this much, cars this much. The value was counted, and then distributed. The value was the same. But, actually, there was still company's stocks. There was assets abroad. It was not mentioned because my brothers contended that they were the ones who worked hard. So, if it is said that the legacy was distributed fairly, it was not fair for the daughters.]*

Because her brothers were people in charge in the company, they contended that the assets and the company's stocks were their hard work. Even though, in fact, the one who owned the assets were their parents. The brothers did not consider their sisters as heiress. E and her sister actually did not agree with their brothers'

treatment, and her sister was actually the first-born. However, they did not have courage to claim. As she said:

*Ya ndak berani ya, kan merasa nggak kerja. Cuma ya aku sama cicikku yang pertama jadi 'gelendengan' di belakang. Padahal kan cicikku malah sebener e anak pertama. [I did not have courage because I felt like I did not work. But, we just mumbled from behind. Actually, my sister is the oldest child.]*

E also told the writer that even though her second sister was the one took care of their parents, she did not get extra shares.

*Cicik yang kedua itu yang ngopeni mamah papah... Dia janda sejak muda terus tinggal sama mamah papah... Tapi kalau soal uang ya ndak dikasi lebih ya ndak ditinggal wasiat. [My second sister was the one who took care of my parents...She is a widow, and then lived with my parents.. But, she did not get extra shares, my parents did not leave any testament.]*

These cases showed that there has been development and improvement in daughter position and rights within the family. Even though, it was still not equal, but the development existed.

Even though Chinese-Indonesian family has lived in Indonesia, some of them apparently still uphold and implement the Chinese customary law in distributing legacy. However, in its development in Indonesia, there have been some changes of the daughter position in Chinese family. For example, daughter is given responsibility to take care of her parents instead of the son. Due to the changes of her position, consequently the inheritance distribution has been experiencing some changes as well. For example is the case of B. In B's family, the oldest sister was the one who took care of her parents instead of the sons. Therefore, B's oldest sister had been chosen by her siblings to obtain the

parents' house as the legacy. All of the siblings had been agreed, therefore there was no conflict or resistance among them. B said that:

*Cuma kan memang tacikku yang pertama kan ekonomine ndak beruntung. Tacikku tu dulu ya memang tinggal sama mamah di Gabahan. Akhir e ya saudara-saudaraku rembugan sepakat rumah dikasike tacikku aja...kan tacik sudah ngurusi mamah, sudah sepantasnya lah dapet rumah. [However, my oldest sister was not so lucky economically. My oldest sister used to live with my mother in Gabahan. In the end, the siblings decided to give the house to her...she had taken care of mother, she deserved to get the house.]*

When being asked about the rest of legacy, she stated, “*Ya kayane ada mas gitu dipek tacikku. Ya udah terus dikasike tacikku to. [I think there were some golds taken by my oldest sister. So it was for my sister.]*”. The siblings did not had conflicts about the legacy distribution.

Even in C case, the Indonesian civil code was undertaken and implemented completely toward her siblings and her. As she stated:

*Waktu itu pewarisannya dibagi secara adil. Nak orang dulu kan laki yang dikasi, perempuan kan nda ya to nek dari nenek moyang dulu. Karena kita kan sudah hidup di Indonesia terus nganggep kalau perempuan sama laki itu sama-sama ya to. Terus jadine yawes laki perempuan semuane dibagi adil gitu. [At that time, the legacy was distributed justly. In old time only men who got the legacy, the women did not get any. Because we have lived in Indonesia and considered that men and women have the same rights. Therefore, men and women got distribution justly.]*

The research has found several reasons for the changing in the implementation of legal system from Chinese customary law to Civil law. They are:

- a. There was assimilation into local society.

In *Peranakan* Chinese culture, they adapted the local culture even though their old culture still could be seen. Leo Suryadinata wrote:

Totok Chinese, after making money, could return to China, but for peranakan Chinese did not depend on China: therefore, they had to stand on their own feet and be friendly with the Indonesians.<sup>96</sup>

There were social-politic changes that affected Chinese ethnic in Indonesia. Chinese-Indonesian people maintained their existence by adapting with those changes. The changes eliminated some of their native identities. On the other hand, the changes brought some advantages to daughter's position in the family and her access to inheritance.

The respondents' age range between 53-63 years old. However, despite their similar age, they have diverse generation status between 2<sup>nd</sup>-5<sup>th</sup> generations. The research suggests that the early generations are keener to the Chinese customary law, such as the case of A and E. While the later generations tend to slightly ignore the old tradition and choose Indonesian legal system, such as the cases of B and C.

A is the 2<sup>nd</sup> generation Chinese-Indonesian, therefore when being asked about how do her family regard inheritance, she answered, "*Ya masih sesuai tradisi*. [Still in line with the tradition.]" Similar answer came from E who is also 2<sup>nd</sup> generation Chinese-Indonesian, "*Mereka (ancestor) memang lebih seneng anak laki*. [My ancestor indeed prefer sons.]" Her answer implicitly showed the subordination of women in her family, which led to women's inheritance rights violence.

Different views came from C who is the 4<sup>th</sup> generation Chinese-Indonesian. In the interview, she stated:

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<sup>96</sup> Leo Suryadinata, 1999, *Op. Cit.*, p. 58.

*Walaupun Konghu Chu ndak ikut tradisi menganggap perempuan kurang, adil lah. Sebener e keluarga Tante tau kalau menurut adat perempuan ndak dapet, tapi memilih untuk tidak mengikuti. Memilih adil. [Even though most of my family were Confucian, we did not follow the tradition that considered women inferior. Actually, my family knew that according to the tradition, women did not inherit legacy, but we chose not to follow it. Chose to be fair.]*

Even for B, who is the 5<sup>th</sup> generation Chinese-Indonesian, she did not know the custom that women did not have the rights to inherit. As she answered to the question if she know about the Chinese customary law:

*Wah kok saya ndak tau kalo perempuan ndak dapet warisan. Tapi di tempatku yang dapet malah yang anak perempuan pertama. Tapi ya itu bukan karena dia anak pertama, tapi karena membutuhkan. [Wah, I did not know if women did not get any inheritance. But, in my family, the one who got the legacy was the first daughter. But, it was not because she was the oldest, but because she needed it.]*

Another of the assimilation aspects was education. In A case, she went to the Chinese school, which was equal to SMP. As she went to Chinese school and brought up in Chinese environment, she was likely keener to the Chinese custom. She also did not know that actually women have rights to inherit, while the rest of the respondents went to Indonesian school. Two of them went to SMA/SMK, and other two went to undergraduate school. Even, in E case, she had her bachelor degree from abroad. However, having high education apparently did not make them litigious. Those women still respected the importance of kinship.

b. There was submission to civil law and other religions.

Many Chinese families do not hold the Confucian belief anymore. Many of them become Christian or Muslim. Their new belief influences their paradigm of life. Five of the respondents did religion conversion. Two of



them are Christian, one of them is Catholic, another one is Buddhist, and the last one prefers not to say her belief.

As happened in the case of B, C, and D. They all stated that they already followed Christianity now. They went to church and did not do prayer to the ancestor anymore. Christianity does not differentiate the inheritance rights between men and women as in Confucianism. Christianity believes that the distribution of legacy for children or any other parties have to be in accordance with God's will. If it has aligned with God's will, there is no need to argue neither customary law nor government law.<sup>97</sup> Parents should not entrust legacy to the children who cannot be trusted. Being an oldest son does not mean the legacy should be entrusted to him automatically.<sup>98</sup> Christianity teaches that if people are treated unjustly, they do not need to dispute it.<sup>99</sup> The respondents who followed this teaching would tend to avoid any conflicts and chose to lump the grievance.

In further question about inheritance, when the respondents put in the position to determine the legacy distribution to their children, most of them chose to use the Indonesian Civil Code. Four of the respondents B, C, D, and E chose to distribute their legacy justly between their sons and daughters. Only respondent A thought to distribute her legacy according to the Chinese customary law.

c. There was international legal instruments of women's rights.

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<sup>97</sup> Erastus Sabdono, 2015, *Menyingkap Hal Warisan*, Jakarta: Rehobot Literature, pp. 84-85.

<sup>98</sup> *Ibid*, p. 87.

<sup>99</sup> *Ibid*, p. 83.

Women's inequality before the law is justifiable on a number of customary norms, such as Chinese customary law. This inequality imposed international movement, which promotes women's right. Indonesia has been ratifying international legal instruments to protect the rights of women in equality and non-discrimination, at least normatively. The legislation promote the equality toward women, especially in inheritance.

Unfortunately, it cannot be said that women are able to fully realize their rights to inherit. Even though the legislation contain of guarantees for equality and non-discrimination based on gender, discrimination against women continues to practice in Indonesia. In some cases, parallel customary and civil legal systems may leave women vulnerable to having their inheritance rights violated. In such plural systems, where customary and civil laws co-exist, there is a tendency to regard women's right to equality as conflicting with the need to uphold the right to cultural autonomy.<sup>100</sup>

## **2. The Strategy Taken by the Heiresses**

Research has found that Chinese-Indonesian women are not very litigious. In the theory of three phases of dispute, they seldom reach the dispute stage. As in the five cases in this research, no one registered a claim for her rights. There was no finding in legal strategy from Chinese-Indonesian women.

As strategy is a mean to achieve the best way to particular end, Chinese women tend to use non-legal strategy. The non-legal strategy found were lumping it and avoid potential conflict. Therefore, the situation also tends to

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<sup>100</sup> Birte Scholz and Mayra Gomez, *op. cit.*, p. 174.

wane instead of escalating into conflict. In case where woman wanted to confront the adversary party, she had limited access to bring the conflict into triadic stage.

The research discovers there are several reasons why women do not claim for their rights in inheritance. From five cases, one woman got fair legacy distribution, while four women did not get any legacy or at least got less than their brothers. Below is the table of reasons why those four women did not claim their rights or use legal means:

Table 2. The reasons of not claiming.

Respondent (age)	Reasons
A (53)	It is the custom.
B (55)	We are family.
D (53)	I was afraid it would only spend money. The notary said I would lose.
E (63)	I did not have courage. I would be embarrassed. I was afraid it would be published in newspaper. They are my own family.

Source: Processed Data, 2016.

Even for urban residents as Semarang, they still consider the ties of kinship important. Most of the respondent stated that the reason of not claiming was the importance of family. Like in B case, she stated “*Ya sudahlah. Masa sama saudara mau itung-itungan kan ya ndak enak to.* [Never mind. I do not want to do some calculations with my own siblings. I feel bad.]” A also expressed the same idea:

*Ya kan memang adat e gitu. Kan anak perempuan dah jadi keluargane suami. Lagian kan ya sama keluarga sendiri masa mau tukaran.* [It is the custom. The daughters already became their husband’s family. Anyways, I do not want to fight with my own family.]

From her statement, it can be seen how A obey the Chinese tradition, especially the concept of “Three Obediences”. She showed that she already became his husband’s family. This confirmed the concept of obedience to husband after marriage.

Another reason that came up was the feeling of embarrassment. Like what happened in E case: “*Secara kekeluargaan aja. Kalau notaris nanti malah tau orang luar. Malah masuk koran.* [Just settle between the family. If go to the notary, public will know. It can be published in the newspaper.]”

Those two reasons, importance of family and feeling of embarrassment, are internal reasons. Those reasons came up from social stigma. Social stigma is another huge obstacle to the realization of women’s inheritance rights. Even, in cases where the law provides protections, women may be hesitated to claim their rights in a court because of the severe social stigma that can result from doing so.

One of the considerations of those women is the adversary party. If a woman does not have any power to stand up for herself, she would just let her rights taken by her adversary party, as in the case of D. After the notary pronounced the testament, D realized that her land allotment was already sold. D was trying to confront her brothers. However, after she came to the notary, she decided to stop confronting. During the interview, D stated her reason to stop confronting:

*Notarisnya bilang gitu ‘Tinggal kebijaksanaan dari kakak-kakak dari keluarga Anda. Keluarga Anda mau bagaimana, ya itu terserah keluarga Anda. Kalau Anda mau menuntut ya nanti malah kalah’. Tapi dari kakak-kakak tidak ada sampai sekarang.* [The notary said, “It will be the decision of the brothers from your family. It is up to your family, if you want to claim you will lose”. But, they have not done anything until now.]

D was told that she would lose to her brothers. The public notary indicated that her party would be lost. This indicated that value and norms put men in superior position than women. Hence, she decided to just lump the conflict. D also stated another reason, which was related to economic matter:

*Buat apa? Dituntut o kaya apa wong tante ndak punya apa-apa, nanti malah uang habis dibuat percuma. Ya to kita nyewa ini nyewa itu apa ndak pake duit. Halah lebih baik ya sudah. [What for? I did not have anything to claim, my money would just run out instead. We hire this and that, it needs money. Better not.]*

From D's statement, it can be seen implicitly that her reason was not merely about money. D was one example of disputants who avoid the court. She had underestimation to the legal system, which is unreliable. The court procedures sometime take overlong and need extra money. As Keebet von Benda-Beckmann said, "The ideal of an impartial judge is familiar, although they also know that many judges are not at all neutral. They complain that judges tend to be partial to the highest bidder"<sup>101</sup>.

D's position in the lower economic stratification than her brothers made her did not have any bargaining position, both in economic sector and in litigation sector. Those reasons became a coercion for D to give up on the conflict and her inheritance rights. D did not want to risk any further loss.

Another important factor for these women is the lack of awareness and knowledge of their rights. Any legal information in simple plain language is rarely disseminated in the field. Without essential information about their rights, it is impossible for women to confront and improve their situation. In

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<sup>101</sup> Sulistyowati Irianto, *Op. Cit.*, pp. 51-52.

communities where women have access to information on their legal rights, women do not know how to access available resources and support.

As in the case of A, she did not know that she had the rights to inherit. She just plainly obeyed the custom as her parents told her. She was not educated with basic women's rights, let alone inheritance rights. In her case, the inheritance happened in 1991 and CEDAW issued in 1984. This fact shows that there is gap between implementing the legislation, upholding the custom and women's awareness of their rights. Therefore, when laws addressing inheritance matters are in place, they cannot serve the women if those women are unaware of their rights.

While in the case of D, she knew about her inheritance rights. However, as explain above, she did not have any access to resource and support. Court procedures are complicated; they need much time and financial resources. Women's lack of legal empowerment is also an obstacle to secure their inheritance rights.

If a woman does not even know that the law is on her side, she may feel that there is no hope of changing her situation. Even in cases where a woman is aware of the law, she may not be able to afford to hire legal representation without financial support. If she does not know how to apply the law properly and has no one to guide or assist her in court, the law will most likely not work in her favor.

It is critical to transform customs and traditions that conserve discrimination against women. Under the Article 2 (f) CEDAW, for example, States Parties

must "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women". Changing cultural attitudes can be hard, but is not impossible. Social norms do and can change. Therefore, it is important for women to know their rights in order to make change happen. It is also important for communities to become more aware of the fact that without significant improvement in the realization of women's rights, equality will not be achieved.

