ONLINE JOURNAL OF RESEARCH IN ISLAMIC STUDIES
المجلة المحكمة عبر الانترنت في الدراسات الإسلامية

UNIVERSITI MALAYA
Akademi Pengajian Islam

Original Article

Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations

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DOI: https://doi.org/10.22452/ris.vol12no2.2

ABSTRACT

This research examines the practice of inheritance distribution in Indonesian society through a socio-legal approach, focusing on the dialectic between Islamic legal norms and social relations that shape the factual practice of inheritance. Although the Compilation of Islamic Law (KHI) stipulates the provisions of inheritance distribution based on the *faraid* principle, the practice in the field shows a variety of interpretations and modifications influenced by social structure, local culture, and family dynamics. This research uses a qualitative approach with interviews, observation, and documentation studies on inheritance practices in several Muslim communities, and the data were analysed using thematic analysis through stages of data reduction, coding, categorization, and interpretation to identify emerging patterns and findings. The results show that the norms of Islamic inheritance law undergo transformation when dealing with the patriarchal system, social status, and education level. In addition, there is a pattern of adaptation through family deliberation that emphasises harmony and substantive justice, as well as resistance from those who adhere to the textual interpretation of sharia. The roles of religious leaders, the state and the family are significant in mediating between ideal norms and social practices. The *maqāṣid sharia* approach is seen as an alternative to reconstruct Islamic inheritance law that is more contextual and responsive to the needs of social justice. This research concludes that inheritance distribution is not only a matter of legal compliance, but also an arena for negotiating values, power and identity in Indonesian Muslim society.

Keywords: Inheritance, Dialectics, Islamic Law, Social Relation & Indonesian.

Introduction

Legal pluralism is a concept that recognizes the coexistence of multiple legal systems within a single social field state law, religious law, and customary norms operating simultaneously in governing social relations. In the context of inheritance, these overlapping legal frameworks often shape the way families resolve succession issues, especially in Muslim

communities where Islamic inheritance law intersects with local customs. The pursuit of substantive justice therefore becomes central, emphasizing fairness and moral equity rather than merely procedural or formal legal compliance. Within this pluralistic environment, *musyawarah* (family deliberation) emerges as a long-standing social practice used to achieve agreement and prevent conflict in inheritance distribution. Instead of strictly adhering to textual legal formulas, families often prioritize relational harmony and negotiated fairness. This research explores how *musyawarah* functions within the dynamics of legal pluralism and how it reflects the pursuit of substantive justice in real inheritance cases.

The distribution of inheritance is a very important social and legal issue in Indonesia's multicultural and multireligious society[1]. In the context of a state of law such as Indonesia, the implementation of inheritance is not only related to the values of normative justice, but also reflects the dynamics of social, cultural, and legal relations that influence each other. Inheritance is not just a transfer of assets, but also a reflection of family structure, gender status, and integration between state law and religious norms adopted by society.

Normatively, Indonesia recognizes a pluralistic legal system, namely the coexistence of Islamic law, customary law, and Western civil law[2]. In the context of heritage, these three legal systems are still used side by side, depending on the religious background, culture, and choice of dispute resolution forum of the parties. Based on the provisions in the Compilation of Islamic Law (KHI)**[3]**, which is the main guideline in resolving inheritance cases in the Religious Court environment, Islamic inheritance law is emphasized as a binding system for Muslims. However, in practice, the implementation of Islamic inheritance law often experiences negotiations with local values and family social relations.

According to data from the Directorate General of Religious Courts (Ditjen Badilag), throughout 2023 there were more than 35,000 inheritance cases submitted to religious courts throughout Indonesia, with an increasing trend from previous years [4]. These cases include disputes over the determination of heirs, the division of inherited assets such as land and residential property, and conflicts arising from competing claims among family members. Of this number, not a few end in failed mediation due to differences in interpretation regarding the division of inheritance based on religion, customs, and the wishes of the heirs driven by family power relations [5]. This phenomenon shows that inheritance law is not solely implemented based on normative doctrine, but is also influenced by social relations and power within the family.

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[1] Zulham and Raihanah HJ Azahari Wahyunadi, "Perubahan Sosial Dan Kaitannya Dengan Pembagian Harta Warisan Dalam Perspektif Hukum Islam," *Jurnal Ilmiah Islam Futura,* 14(2)(2015): 166.

[2] Berihun A. Gebeye, "Legal Theory in Africa : Between Legal Centralism and Legal Pluralism," *Queen Mary Law Journal: Special Conference Issue*, no. November 2017 (2017): 37–49.

[3] Arif Sugitanata and Muhammad Lutfi Hakim, "The Domination Of Customary Law In Muslim Matrimonial Procedures Prohibiting Khiṭbah in the Sade Muslim Community," *Al-Ahwal* 16, no. 2 (2023): 302–19, https://doi.org/10.14421/ahwal.2023.16206.

[4] Mahkamahagung, "Putusan Waris Islam," mahkamahagung.go.id, 2023, https://putusan3.mahkamahagung.go.id/direktori/index/kategori/waris-islam-1/tahunjenis/putus/tahun/2023.html.

[5] Rijkova, D. M., & Agung Basuki Prasetyo, S. Perkembangan Praktik Pembagian Warisan Menurut Hukum Waris Adat Betawi pada Masyarakat Betawi di Kelurahan Srengseng Sawah, Kecamatan Jagakarsa, Jakarta Selatan. *Diponegoro Law Journal*, 5(3)(2016), 1-11.

Social relations, especially between parents and children, between siblings, and between sons and daughters, play an important role in the practice of inheritance distribution. In many cases, the values of substantive justice understood by society are more prominent than formal compliance with Islamic law. For example, the distribution that should follow the principle of 2:1 (male:female) in Islamic law[6], is often changed based on considerations of the balance of economic responsibility, family feelings, or to avoid conflict. In Javanese and Bugis societies, for example, many inheritance distribution patterns are found based on family deliberations that tend to be egalitarian, and are not always in accordance with Islamic law.

Several previous studies have highlighted this issue. For example, studies by Bowen (2003) and F. von Benda-Beckmann (2009) describe how Islamic law in the context of inheritance has been localized in the practices of Indonesian society. Meanwhile, research by Hooker (2008) emphasizes the importance of understanding the interaction between state law, customary law, and Islam as a form of complex legal pluralism. However, most of these studies emphasize the normative-administrative or historical aspects of law, and have not fully elaborated the dimensions of social relations and power dynamics that underlie the practice of inheritance distribution in a micro-sociological manner.[7].

The research gap that emerged was that there were not many studies that comprehensively combined Islamic law analysis and legal sociology in understanding inheritance practices in society. Important aspects such as power negotiations within the family, the influence of social status, and the dynamics of gender relations in the inheritance process are often overlooked in legal studies that are too textual or legalistic. In fact, an interdisciplinary approach is needed to explain why in many cases, Islamic law is not fully followed or even modified by Muslim society itself.

Therefore, this study aims to explore how the dialectic between Islamic law and social relations shapes inheritance practices in Indonesia. The main focus is on how actors in the family negotiate Islamic legal norms, how social and economic considerations influence decisions, and how formal law responds to dynamic social realities[8]. This approach is expected to provide a more comprehensive understanding of inheritance law as a living normative system (living law).

By examining inheritance practices from two perspectives—Islamic legal norms and social structures—this study not only highlights the issue of legal compliance, but also contributes to the development of Islamic law that is contextual and responsive to social needs. The results of this study are expected to serve as academic and practical references, especially for policy makers, legal practitioners, and religious institutions in restructuring the approach to

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[6] Rajab, Elizamiharti, and Muslim, "Islamic Inheritance Law in Saruaso and Sawah Tangah Villages Based on Islamic Principles," *Jurnal Ilmiah Islam Futura* 22 (2) (2022): 225–43, https://doi.org/10.22373/jiif.v22i2.12130.

[7] Nur Rochaeti et al., "A Restorative Justice System in Indonesia: A Close View from the Indigenous Peoples' Practices," *Sriwijaya Law Review* 7(1)(2023): 87–104, https://doi.org/10.28946/slrev.Vol7.Iss1.1919.pp87-104.

[8] Nur Solikin and Moh Wasik, "The Construction of Family Law in The Compilation of Islamic Law in Indonesia: A Review of John Rawls's Concept of Justice and Jasser Auda's Maqashid Al-Shari'a," *Ulumuna* 27(1)(2023): 315–40, https://doi.org/10.20414/ujis.v27i1.708.

inheritance distribution that is fair, sustainable, and in accordance with the social context of Indonesian society. This study contributes both to theory and practice. Empirically, it reveals how social relations, power structures, and local norms reshape the application of faraid across Indonesian communities; theoretically, it proposes a maqāṣid-informed socio-legal lens to read and reconstruct inheritance rules; practically, it offers policy and procedural recommendations for courts, religious institutions, and local leaders to realise fairer and sustainable inheritance outcomes.

Scope and Methodology

The research method used in the study of inheritance distribution in Indonesia viewed through the dialectics of Islamic law and social relations—is a qualitative approach with a socio-legal research type. This approach was chosen to examine in depth the interaction between Islamic legal norms that regulate inheritance and the social practices that develop within communities. The research method used in this study on inheritance distribution in Indonesia viewed through the dialectics of Islamic law and social relations—is a qualitative approach with a socio-legal research type. This approach was chosen to examine in depth the interaction between Islamic legal norms that regulate inheritance and the social practices that develop within communities. The purpose of this study is not only to analyse legal doctrine as contained in the Compilation of Islamic Law and classical *fiqh* literature, but also to explore how those norms are interpreted, negotiated, and implemented in everyday social reality.

This research is limited in scope to the empirical context of inheritance dispute resolution and distribution practices in Central Java Province, particularly in the Religious Court of Kudus and surrounding communities. The location was chosen purposively to capture cultural variation and local family structures that influence inheritance distribution, including the differing patterns of rural–urban social dynamics. The research subjects consist of judges, clerks (contents analysis), heirs, religious leaders (kyai/penghulu), and notaries/PPAT involved in inheritance cases. Research participants were recruited using purposive and snowball sampling, depending on access to relevant actors and complexity of case networks. Data were collected through in-depth interviews, case document analysis, and participant observation of inheritance settlement processes. Data analysis was conducted descriptively–analytically using Pierre Bourdieu's theory of social relations and Eugen Ehrlich's theory of living law to reveal the tension and harmony between Islamic legal norms and the social structures that influence inheritance practices. Through this method, the research is expected to explain the complexity of inheritance distribution in Indonesia as the result of dialectics between legal texts and socio-cultural dynamics.

Results and Findings

Normative Construction of Inheritance Distribution in Islamic Law and the National Legal System

Inheritance law in Islam or *faraid* is part of Islamic family law which has been regulated systematically in the Al-Qur'an, Hadith, ijma', and qiyas [9]. The basic principles emphasize the clarity of each heir's share (for example: a son gets twice the share of a daughter), as well as the existence of certain rights that must be fulfilled before the distribution of inheritance (such as debt repayment and execution of a will). The division is fixed and is seen as a provision that cannot be changed, because it is believed to originate from revelation (*nas qath'i*)[10].

In Indonesia, these *faraid* principles are institutionalized in the Compilation of Islamic Law (KHI) which serves as a formal legal guideline in the Religious Court environment. Articles 176–191 of the KHI explicitly regulate the share of heirs, which generally adopt the *faraid* principle [11]. However, the KHI also opens up space for family deliberation as referred to in Article 183, which allows for a family-based distribution as long as it does not conflict with sharia provisions. This shows that the KHI is not only a reproduction of classical *fiqh* dogmatics, but also a form of compromise to the social reality of Indonesia. However, the implementation of *faraid* norms in society does not always run according to normative construction. Many Muslim families choose to divide inheritance equally or based on family deliberation [12]. This is where the tension arises between law as a divine norm and the demands of social relations in society that prioritize harmony, substantive justice, and gender equality.

In the context of gender, inheritance practices reveal layers of negotiation. Many modern families consider faraid distribution to be unfair to women, especially when women are breadwinners or support the family economy. Therefore, various forms of resistance have emerged, such as equal distribution, gifts to daughters before the death of the heir, or family deliberations that modify faraid provisions. These practices demonstrate how gender interpretations of faraid are negotiated in accordance with the socio-economic dynamics of Indonesian Muslim society. This tension becomes one of the meeting points between the discourse of Islamic law and social relations which is the focus of the second sub-discussion.

On the other hand, the inheritance law system in Indonesia adheres to pluralism on the other hand, the inheritance law system in Indonesia adheres to legal pluralism, where there are three legal systems that coexist: Islamic law, customary law, and civil law (Burgerlijk Wetboek/BW). Civil law, inherited from the Dutch colonial era, is still used by non-Muslim communities and Christian or Confucian Chinese groups. In this system, inheritance is divided based on the principle of equality between children without distinguishing between genders, and is more oriented towards the principle of freedom of will. Meanwhile, customary law shows a more complex and flexible diversity of law, where there are three legal systems that coexist: Islamic law, customary law, and civil law (Burgerlijk Wetboek/BW). Civil law, inherited from the

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[9] Judiasih, Sonny Dewi, and Efa Laela Fakhriah. "Inheritance law system: Considering the pluralism of customary law in Indonesia." *Padjadjaran Jurnal Ilmu Hukum (Journal of Law)* 5(2)(2018): 315-330.

[10] Rajab, Rajab, Elizamiharti Elizamiharti, and Muslim Muslim. "Islamic inheritance law in saruaso and sawah tangah villages based on islamic principles." *Jurnal Ilmiah Islam Futura* 22(2)(2022): 225-243.

[11] Ibid., 240.

[12] Abdul Mutakabbir, Hastuti, and Mikdar Rusdi, "The System of Inheritance Distribution in South Sulawesi," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23(1)(2023): 57–76, https://doi.org/10.18326/IJTIHAD.V23I1.57-76.

Dutch colonial era, is still used by non-Muslim communities and Christian or Confucian Chinese groups. In this system, inheritance is divided based on the principle of equality between children without distinguishing between genders, and is more oriented towards the principle of freedom of will. Meanwhile, customary law shows a more complex and flexible diversity[13]. In certain traditional societies, such as the Minangkabau, a matrilineal system applies, where inheritance is passed down through the mother's line. In other places, such as the Batak or Balinese, a patrilineal or bilateral system may dominate. Each customary system reflects local values such as harmony, the sustainability of ancestral lands, and traditional social structures[14]. The distribution of inheritance in customary law is more dynamic because it tends to be based on family deliberation and takes into account the social context and needs of the heirs.

This difference shows that legal norms do not live in a vacuum, but always negotiate with the cultural values and social structures of society. This is where the relevance of the third sub-discussion on the dialectic of norms and social structures. When the principle of *faraid* meets the tradition of customary law or the logic of equality in BW, different adaptation or resistance strategies emerge [15]. This also shows that inheritance practices are often not purely subject to one legal system, but are the result of a compromise between various value systems that exist in society. This Indonesian experience is in line with patterns emerging in a number of Muslim-majority countries. In Malaysia, the *faraid* system is formally applied, but people often use grants or wills to achieve a more flexible distribution, especially with regard to the interests of daughters. In Egypt, although *faraid* is positive law, it is common practice for families to give grants while the heir is still alive to prevent conflict. Meanwhile, Tunisia has even proposed reforms to equalise the inheritance rights of men and women.[16] This comparison shows that the dynamics of negotiation between divine law, social structures, and demands for gender equality are a global phenomenon in the Islamic world.

The multicultural conditions of Indonesian society have created an intense dialectic space between the formal legal system and social practices. The dualism (even pluralism) of law recognized by the state allows people to choose the legal system that is considered most in accordance with their values and beliefs. However, this choice is often not completely free, because there are social, religious, and even administrative pressures that influence inheritance distribution decisions. This is where the problem of legal dualism arises. Many Muslim communities on the one hand want to obey Islamic law, but on the other hand also want to

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[13] Icha Choerunnisa, "The Distribution of Inheritance Rights To Heirs of Different Religions : Study of Court Decision Number 0554 / PDT . P / 2023 / PA . SBY," *Journal of Law, Politic and Humanities (JLPH)* 4(4)(2024): 920–29, https://doi.org/https://doi.org/10.38035/jlph.v4i4.

[14] Jamil Ddamulira Mujuzi, "The Islamic Law of Marriage and Inheritance in Kenya," *Journal of African Law* 65(3)(October 2021): 377–401, https://doi.org/10.1017/S0021855321000346.

[15] Rajab, Elizamiharti, and Muslim, "Islamic Inheritance Law in Saruaso and Sawah Tangah Villages Based on Islamic Principles." 230-233.

[16] Lukman, Chandra Hakim Kurniawan. "Pembaharuan Hukum Waris Di Indonesia Dan Negara Negara Muslim". *J-CEKI : Jurnal Cendekia Ilmiah* 4(3)(2025):59-66. https://doi.org/10.56799/jceki.v4i3.6993

maintain family harmony, which often encourages an even distribution of inheritance [17]. This conflict gave rise to the practice of "dividing according to Islam" but with deliberative negotiations that prioritized a sense of substantive justice. In practice, faraid norms can be softened, changed, or even not used, depending on the social context and the symbolic power of figures in the family.

This phenomenon is relevant to the second and third sub-topics, which examine how Islamic law is interpreted and negotiated in social practice. The multicultural context also shows that law is not only normative, but is a field of contestation of values, power, and identity[18]. Therefore, understanding the distribution of inheritance must go beyond a legalistic approach and include a sociological-historical approach that considers social, cultural and ideological factors in legal practices prevailing in Indonesia. The Indonesian state, through the Marriage Law and the divided judicial system (General Courts and Religious Courts), has established a legal framework that recognizes the parallel existence of Islamic and customary law. The KHI, although not a law, is the main reference in inheritance cases in religious courts. On the other hand, customary law and BW still apply according to the religious background and choice of the community. The state appears to take an ambivalent stance: on the one hand, it standardizes the Islamic legal system for Muslims, but on the other hand, it still allows the diversity of systems to apply in society. This ambivalent stance opens up space for flexibility as well as legal uncertainty.[19] In some cases, the courts decide inheritance cases based on the KHI rigidly, while the community rejects or avoids the courts in order to maintain social relations. This gives rise to a tendency to resolve inheritance through informal channels or family deliberations. The state is thus not always the main actor in the distribution of inheritance; it is more often the guardian of formalism, while the community carries out its own social values.

The relevance to other sub-topics is seen in how the state plays a dual role: as a legal institution and symbol of religious authority, but also as a space for compromise between law and social reality. If Islamic law is institutionalized by the state, but social practices are different, then there is a shift in legal authority from the state to the family or society[20]. This is where it is important to see the distribution of inheritance not only as a normative product, but also the result of complex social relations, as explained in the second and third sub-discussions.

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[17] Hafidz Taqiyuddin, Mus'Idul Millah, and Hikmatul Luthfi, "Instruments of Property Ownership in Islam: The Study of Inheritance Law," *Journal of Islamic Thought and Civilization* 13(1)(2023): 157–71, https://doi.org/10.32350/jitc.131.11.

[18] Suwarti, Decha Khunmay, and Stepan Abannokovya, "Conflicts Occurring Due to the Application of Different Legal Inheritance Systems in Indonesia," *Legality: Jurnal Ilmiah Hukum* 30(2)(2022): 214–27, https://doi.org/10.22219/ljih.v30i2.21020.

[19] Harahap, Sumper Mulia. "Islam Dan Budaya Lokal Studi terhadap Pemahaman, Keyakinan, dan Praktik Keberagamaan Masyarakat Batak Angkola di Padangsidimpuan Perspektif Antropologi." *TOLERANSI: Media Ilmiah Komunikasi Umat Beragama* 7, no. 2 (2015): 154-176..

[20] Fariduddin, Ecep Ishak. "Kontekstualisasi Hukum Islam dan Transformasi Sosial-Budaya Masyarakat Perspektif Wael B. Hallaq." *The Indonesian Journal of Islamic Law and Civil Law* 3, no. 1 (2022): 18-38.

Social Practices of Inheritance Distribution: Between Loyalty to Sharia and Demands of Family Relation

The phenomenon of inheritance distribution in Indonesian society contains complexities that cannot be simplified only with the normative approach of Islamic law. Field findings show that in many cases, the distribution of inheritance does not always follow the faraid formula which stipulates a two-to-one share between men and women. On the contrary, there are quite a few families who actually divide it equally between all children, without distinguishing between genders, on the grounds of maintaining harmony and equality. This equal distribution is generally carried out through family agreement after deliberation [21]. In the deliberation, all heirs gather and discuss who gets what and in what amount. This deliberation becomes a deliberative medium that brings together personal desires with shared values. This is where social relations work as a hidden regulator of wealth distribution, replacing the formal normative formula of sharia. As one respondent admitted, *"If it is divided two-to-one, the younger sister will feel unappreciated. It is better to divide it equally so that no one gets hurt."* This narrative illustrates how emotional considerations and sibling relationships often become decisive in inheritance deliberations.

The community's choice to hold deliberations shows that the inheritance distribution process is not entirely legalistic, but is more often determined by the social and moral values that live in the family. Deliberation in this context is not only a means of resolution, but also a social ritual that avoids conflict and division between siblings. Inheritance is understood not only as property, but a symbol of attachment and continuity of kinship relations. The social factors that influence this practice are very diverse. One of the most dominant is moral pressure from the social environment. In many communities, especially in rural areas, families who appear to be "unfair" in dividing inheritance are often the subject of community discussion[22]. This moral pressure makes parents or heirs reluctant to follow the *faraid* provisions strictly if it is considered that it could hurt the feelings of the daughters or create disharmony.

In addition to moral pressure, the value of harmony in the family is a very strong driving factor in decisions about inheritance distribution. In Javanese culture, for example, harmony (*rukun*) is often positioned higher than the accuracy of legal norms. Many parents or sons choose to give in so that the relationship between siblings is maintained, even though legally they are entitled to a larger share. In this context, substantive justice trumps formalistic justice. [23] The position of women in the social structure is also an important variable in the practice of inheritance distribution. In some areas, women who are married and considered to be part of the husband's family are often not required to receive a share of the inheritance. However, in contemporary social developments, especially in urban areas, demands for gender equality and

[21] Khosyi'ah, Siah, and Ayi Yunus Rusyana. "Inheritance settlement of descendants of children and siblings in Islamic law with local wisdom in Indonesia." *Cogent Social Sciences* 8, no. 1 (2022): 2126615.

[22] Eric, Eric. "Hubungan antara hukum Islam dan hukum adat dalam pembagian warisan di dalam masyarakat Minangkabau." *Jurnal Muara Ilmu Sosial, Humaniora, dan Seni* 3, no. 1 (2019): 61-70.

[23] Harahap, Sumper Mulia. "Islam Dan Budaya Lokal Studi terhadap Pemahaman, Keyakinan, dan Praktik Keberagamaan Masyarakat Batak Angkola di Padangsidimpuan Perspektif Antropologi." *TOLERANSI: Media Ilmiah Komunikasi Umat Beragama* 7, no. 2 (2015): 154-176.

higher education encourage girls to be more empowered in demanding their inheritance rights. As a result, a kind of reconceptualization of the role of women in the family has emerged, which also influences inheritance practices. To clarify how these different forces interact, this section may adopt a simple conceptual model that maps the relationship between religious norms (faraid), social expectations of harmony, gender roles, and actual legal practices in the field. Such a model helps illustrate the dynamic negotiation that shapes inheritance outcomes in Indonesian families.

However, despite the increasing awareness of equality, resistance to the distribution of inheritance based on sharia also appears in a subtle form. Some people who are religiously literate feel guilty if they do not carry out the provisions of *faraid*, but still do so in the name of family justice. Here we can see the tension between absolute religious norms and dynamic social needs. One interviewee expressed this dilemma succinctly: *"I am afraid of failing to follow the Sharia, but if we apply faraid, the siblings might end up in conflict. So we simply agreed to divide it equally".* This tension does not necessarily create conflict, but rather practical compromises that are socially accepted [24]. In some cases, parents before dying have "arranged" the inheritance in the form of a grant, with the intention of preventing conflict between their children after death. This practice also reflects social caution in maintaining family stability. Grants are chosen because they allow for equal distribution without explicitly violating religious norms, even though they actually bypass the inheritance mechanism. In Islamic legal language, this is a form of *tahyiil* or legal engineering to avoid social conflict.

People also tend to respect family agreements more than court decisions. In many cases, heirs are reluctant to take cases to the religious courts, because it is considered to expose the family's shame and exacerbate disputes [25]. This shows that legal legitimacy does not always come from formal institutions, but rather from social consensus built on the principle of family and informal agreements. This family agreement becomes a living source of law in the context of inheritance [26]. It is not officially documented, but is adhered to and practiced as a form of local wisdom. In many ways, this living law is more effective than written law, because it is more adaptive to the dynamics of social relations and local values that develop in society. However, not all family agreement practices take place without problems. In some cases, deliberations that appear harmonious on the surface contain power imbalances, especially when the economically or socially dominant party imposes its will. Women, for example, even though they are present at deliberations, sometimes do not have the same space to voice their opinions. In this context, deliberation is not always identical to justice, but can become an arena for symbolic domination.

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[24] Jonathan Bonnitcha, "What Is the Problem with Investment Disputes? The Case of the Draft Legislative Guide on Investment Dispute Prevention and Mitigation," *AJIL Unbound* 118 (2024): 230–235.

[25] Zakiul Fuady Muhammad Daud and Raihanah Bt Azahari, "Menyoal Rekontruksi Maqashid Dalam Pembaharuan Hukum Kewarisan Islam," *Jurnal Ilmiah Islam Futura* 18, no. 1 (2019): 1-33.

[26] Taqiyuddin, Hafidz, Mus'idul Millah, and Hikmatul Luthfi. "Instruments of Property Ownership in Islam: The Study of Inheritance Law." *Journal of Islamic Thought and Civilization* 13, no. 1 (2023): 157-171.

This inequality shows that law does not work in a vacuum, but is always constructed and reconstructed by complex social relations. Religious norms in the form of rigid Islamic inheritance laws are often reduced in meaning when faced with power structures and hierarchical social relationship patterns in the family [27]. This means that the division of inheritance is not only about faith, but also about power negotiations. Meanwhile, there is also a phenomenon of resistance to customary law that marginalizes women's rights in inheritance. Several customary communities that previously prioritized the male line are now starting to shift to provide space for women, as a result of interactions with Islamic values and modernity. This process shows the dialectic between local values, religion, and social change that are interrelated.

At this point, it can be seen that the practice of inheritance distribution becomes a dialectical space between the normative teachings of Islamic law and fluid social relations. It is not a closed normative space, but an open field of compromise, where spiritual, cultural, moral, and social values interact with each other. Inheritance becomes more than just a matter of distributing property, but also an arena for constructing the meaning of justice within the framework of family and society (Nasution, 2019). Thus, an analysis of the practice of inheritance distribution in Indonesia demands an interdisciplinary approach. It is not enough just to look at it from a textual perspective from Islamic law, but also requires an understanding of the sociological, cultural, and even psychological dynamics that surround the family. In practice, Indonesian society has shown that the law is not only to be obeyed, but also to be negotiated according to the social context they face.

Dialectics between Islamic Law and Social Structure: Adaptation, Resistance, and Transcendence of Norms

In the context of Indonesia's diverse society, Islamic inheritance law norms are not always implemented rigidly according to normative fiqh texts. These norms undergo transformation as they face social dynamics such as class structure, patriarchal systems, and the level of education of the community. For example, in the upper middle class, inheritance distribution often considers aspects of equality between children—regardless of gender—on the grounds of modern justice and to maintain family harmony. On the other hand, among the lower classes, inheritance distribution still strongly favors sons, on the grounds of loyalty to religious teachings as understood textually.

Patriarchal structures also play a large role in how Islamic legal norms are interpreted and practiced. In many communities, men are still considered the heads of families who are responsible for the economic sustainability of the extended family, so inheritance tends to give a larger portion to sons even though this social norm is wrapped in a religious pretext [28]. This

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[27] Encarna Jarque Martínez and José Antonio salas Auséns, "The Visibility of Women in the Context of Pre-Nuptial Agreements in Rural Northern Aragon (16th-18th Centuries)," *Vinculos de Historia* 10(10)(2021): 261–77.

[28] Sri Hariati and Musakir Salat, "The Injustice of Distributing Marital Property (Harga Gini Gono) in *Divorce Cases*," 2013, 448–63.

shows how religious norms in practice often become a justification for established social power relations. In other words, social structures not only influence the implementation of Islamic law, but also help shape religious understanding itself [29]. On the other hand, the level of education also influences the extent to which society is able to critically understand Islamic inheritance law. In societies with access to higher education, there is an increase in awareness of the principle of substantive justice in Islam. This gives rise to new practices such as equal distribution of inheritance between sons and daughters while still referring to the *maqasid* sharia as a normative framework [30][31]. This transformation shows that Islamic legal norms are flexible and can be actualized in line with changes in social awareness.

Changes and differences in the implementation of inheritance law are also clearly visible between urban and rural communities. In urban areas, where the influence of education, media, and progressive religious thought is stronger, people tend to be more adaptive to modifications to inheritance law [32]. They are more open in interpreting Islamic teachings contextually and often involve professional mediation or religious figures who have a social justice perspective. Meanwhile, rural communities tend to maintain traditional practices, both conservative Islamic inheritance and customary inheritance, as a form of compliance with local traditions. Adaptation patterns also appear in the form of family deliberations that ignore formal Islamic inheritance rules. Many families decide on the distribution of inheritance based on agreement, not based on Islamic jurisprudence, with the consideration of avoiding conflict and maintaining friendship. Although normatively this deviates from Islamic inheritance law, sociologically it is a solution that is considered fair and realistic by society [33]. This shows that social values such as family harmony and stability often displace formalistic values in the application of Islamic law.

However, resistance to change cannot be ignored. Some people who hold firmly to the authority of classical books and fatwas of conservative scholars continue to reject forms of inheritance distribution that are considered not in accordance with sharia. They reject compromise on the basis of *maqasid* or social context, and choose to carry out inheritance as explained in the text. This pattern of resistance shows the existence of social segmentation in understanding and implementing Islamic law, which can be seen as a form of conservatism based on religious identity. In a reality like this, the role of religious figures becomes very

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[29] Nabilla Ayu Suraya, Akhmad Khisni, and Munsharif Abdul Chalim, "Research on Inheritance for Children from Sirri Marriage Based on the Compilation of Islamic Law," *Sultan Agung Notary Law Review* 3(1) (2021): 48.

[30] Jasser Auda, *Maqasid Al-Shariah as Philoshophy of Islamic Law* (London: The International Institute of Islamic Thought, 2008). 77.

[31] Muhammad Harfin Zuhdi and Mohamad Abdun Nasir, "Al-Mashlahah and Reinterpretation of Islamic Law in Contemporary Context," *Samarah* 8(3)(2024): 1818–39, https://doi.org/10.22373/sjhk.v8i3.24918.

[32] Sita Hidayah, "From Unity in Diversity to Culture Wars? Aceh Women's Mastery over Adat, Islam, and the State Inheritance Laws," *Women's Studies International Forum2* 103, no. March-April (2024): 102881, https://doi.org/https://doi.org/10.1016/j.wsif.2024.102881.

[33] Suhaim, Agustri Purwandi, and Akhmad Farid Mawardi Sufyan, "Binsabin Dan Tongngebban as Madurese Local Wisdom: An Anthropology of Islamic Law Analyses," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 16, no. 1 (2021): 161–79, https://doi.org/10.19105/AL-LHKAM.V16I1.3861.

significant [34]. In many communities, local religious figures (*kyai*, *ustaz*, or *penghulu*) have high moral authority in determining the "legitimate way" to divide inheritance. Religious figures can be agents of transformation if they have a progressive understanding and are responsive to the needs of the times. However, on the other hand, they can also be agents of conservatism that strengthen the application of inheritance laws literally without considering aspects of social justice.

The state also cannot escape responsibility in mediating the tension between ideal norms and factual practices in the distribution of inheritance [35]. Through institutions such as religious courts, the state should provide policy direction that is not only legal-formal, but also substantive. However, in practice, the state tends to let this ambiguity run without firm intervention. The Compilation of Islamic Law as a formal source of law still follows the classical fiqh pattern without accommodating social practices that have developed in society. To strengthen this argument, examples from religious court decisions such as cases where judges still strictly apply the 2:1 formula despite evidence of unequal caregiving roles could be included to illustrate the state's ambivalence. The family as the smallest social unit also plays a major role in mediating between legal norms and social reality [36]. In many cases, the decision on inheritance distribution does not come solely from legal texts, but rather from family deliberations that take into account economic conditions, the role of children in caring for their parents, or even the existence of daughters who have been "bought" a house by their parents during their lifetime. This confirms that the modern family structure also encourages the emergence of informal laws in inheritance distribution.

Given this complexity, the maqashid sharia approach is important to be used as a framework for understanding and reconstructing Islamic inheritance law in Indonesia [37]. This approach emphasizes the basic objectives of sharia such as justice, welfare, and protection of individual rights [38]. With this approach, classical fiqh rules can be reviewed to be in line with the ever-evolving social context without losing their normative roots. In this context, terms such as "transcendence of norms" and "legal engineering (tahyiil)" should be briefly clarified for example, transcendence refers to attempts to move beyond literal textual rules toward higher ethical objectives, while tahyiil refers to creative juridical mechanisms that maintain compliance with formal law while adjusting outcomes to social needs. Reconstructing inheritance law based on maqashid does not mean ignoring fiqh texts, but placing them in a social hermeneutic framework. This means that the text must be read in the socio-cultural context of plural and

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[34] Eric, Eric. "Hubungan antara hukum Islam dan hukum adat dalam pembagian warisan di dalam masyarakat Minangkabau." *Jurnal Muara Ilmu Sosial, Humaniora, dan Seni* 3, no. 1 (2019): 61-70.

[35] Mayyadah dan Sapruddin, "Penerapan Fleksibilitas Hukum Pada Putusan Hakim Dalam Perkara Waris Di Pengadilan Agama Palu," *Bilancia: : Jurnal Studi Ilmu Syariah Dan Hukum* 11(2)(2017): 267–98, https://doi.org/https://doi.org/10.24239/blc.v11i2.307.

[36] Farah Nuril Izza Martyarini Budi Setyawati, A.P John Parsons, Bobbi Laing, Andrew Lynch, Imam Labib Habiburahman, "The Family Caregiving; A Rogerian Concept Analysis of Muslim Perspective & Islamic Sources," *Heliyon* 10(3)(2024), https://doi.org/https://doi.org/10.1016/j.heliyon.2024.e25415.

[37] Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law*, 79-80.

[38] Milhan, Milhan. "Maqashid Syari 'Ah Menurut Imam Syatibi Dan Dasar Teori Pembentukannya." *Al-Usrah: Jurnal Al Ahwal As Syakhsiyah* 9, no. 2 (2022): 83-102.

dynamic Indonesian society. In this context, the distribution of inheritance is not only about who gets how much, but how justice can be felt by all parties, especially those who are structurally weak, such as women and adopted children.

This reformulation must also take into account the principle of substantive justice, which does not stop at mathematical equality, but also at the distribution of responsibilities and contributions within the family. For example, a daughter who has been caring for a sick parent for years certainly has greater moral rights than a son who legally gets two parts, but is never involved in household affairs [39]. Sensitivity to realities like this is an important basis for building a relevant and fair Islamic inheritance law system. Renewal of inheritance law also demands changes in the religious education system, so that the younger generation of Muslims not only know inheritance law as a 2:1 formula, but also understand its context, purpose, and flexibility. By equipping the community with an understanding of *maqasid* sharia and social ethics, a more just, contextual, and humanistic legal awareness will grow. Finally, the distribution of inheritance in Indonesian society must be understood not only as a legal practice, but as a reflection of social relations, family values, and the development of religious thought. The dialectic between Islamic law and social structure is not a clash that negates each other, but a creative space to actualize Islamic values in real life. Within this framework, Islamic inheritance law can continue to be relevant as long as it is open to dialogue with the social context and the demands of modern justice.

Conclusion

This study shows that inheritance distribution in Indonesia is not merely a matter of normative application of Islamic law, but is a complex, dynamic social process, and full of negotiations between legal texts and social realities. Islamic inheritance law norms derived from the Qur'an and formalized in the Compilation of Islamic Law experience various forms of adaptation and resistance when faced with layered social structures, such as patriarchy, social class, education, and the context of cultural locality. In many cases, family relations, harmonious values, and perceptions of substantive justice are more dominant in determining inheritance distribution patterns than textual *faraid* provisions. These findings show that Indonesian society practices inheritance law in a dialectical space between loyalty to sharia and the demands of fluid social relations. The law is not rigidly obeyed, but is negotiated to be in line with the needs and values that exist in society. Family deliberations, granting of gifts before death, or equal distribution between sons and daughters are concrete manifestations of how Islamic law is modified within the framework of culture and social harmony.

In this context, the *maqasid* sharia approach becomes very important as a basis for reconstructing Islamic inheritance law that is more responsive to social dynamics. Principles such as justice, welfare, and protection of vulnerable groups. Religious courts can apply the principle of *maqāṣid* by interpreting the law in a more contextual manner, for example by

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[39] M. Umar. Chapra, *Islam and Economic Development* (Jedda: Islamic Research and Training Institute (IRTI) Islamic Development Bank, 2007), 88.

considering the role of guardianship and economic vulnerability in each dispute. Islamic educational institutions can also incorporate *maqāṣid* modules to increase public understanding of the flexibility of Islamic law. In addition, the role of the state needs to be clarified. The state should not only issue the KHI, but also provide policy direction, support community-based mediation, and develop inheritance guidelines that balance textual norms with social justice. Therefore, in the future, it is necessary to update Islamic inheritance law in Indonesia that is not only text-based, but also open to social dialogue. Law must be understood as a system that lives and develops with its society. Within this framework, the distribution of inheritance can be an instrument of social justice that not only upholds divine norms, but also maintains integration and harmony within the family and society at large.

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