

## Inheritance Distribution Practices in the Traditional Customs of Temanggung Society

<sup>a,1</sup> Muh. Baehaqi <sup>b,2,\*</sup> Munsuun <sup>c,3,\*</sup> Mahdee Maduerawae

<sup>a</sup> INISNU Temanggung, Indonesia;

<sup>b</sup> INISNU Temanggung, Indonesia;

<sup>b</sup> Fatoni University Thailand, Thailand

<sup>1</sup> abahbaehaqi@gmail.com; <sup>2</sup> munsuun.tmg77@gmail.com; <sup>2</sup> maduerawae01@gmail.com

\*Correspondent Author

Received: 10 -10- 2024

Revised: 12 -11- 2024

Accepted: 10 -12- 2024

### KEYWORDS

*Inheritance,  
Distribution,  
Practices,  
Traditional Customs,*

### ABSTRACT

This study examines inheritance distribution practices within the traditional customs of the Temanggung community, focusing on Banjarsari Village, Bejen District. Employing a qualitative descriptive approach, the research draws on field observations and in-depth interviews with community leaders, religious figures, and heirs involved in inheritance distribution. The findings reveal that inheritance is predominantly distributed according to customary law (adat), often prior to the death of the testator and equally among sons and daughters. Although this practice diverges from the formal provisions of Islamic inheritance law (farā'iq), it is maintained to ensure social harmony, perceived fairness, and the prevention of familial conflict. From the perspective of maqāṣid al-sharī'ah, these customary practices reflect an orientation toward public welfare (maṣlahah), preservation of family unity, and protection of property. The study highlights the dynamic interaction between Islamic law and local tradition and emphasizes the importance of context-sensitive, maqāṣid-oriented approaches in applying Islamic inheritance law within plural legal systems.

This is an open-access article under the CC-BY-SA license.



## Introduction

Islamic law (*Sharia*) is a divine law derived from Allah and serves as a driving force for justice, productivity, development, humanity, spirituality, cleanliness, unity, hospitality, and democratic society (Auda, 2008). Discussing Islamic law requires understanding its sources. The Qur'an and Sunnah encompass the entirety of Islamic law; however, their Arabic language and linguistic rules require careful interpretation to extract legal rulings. Sometimes linguistic understanding alone is insufficient to grasp the intended meaning of Qur'anic verses or prophetic traditions (*hadith*), especially in light of changing human behavior that may not be explicitly addressed in the texts. Since the Prophet Muhammad (peace be upon him), who acted as a mediator between revelation and reality, has passed away, no further divine revelation has been received (Athaillah, 2005). Yet, human behavior and environmental changes continue, affecting the formation and application of *Sharia* law.

Ahmad Mustafa al-Maraghi notes, "Laws are enacted for the benefit of humans, and human needs may differ according to time and place. If a law was enacted due to a need that no longer exists, it is wise to repeal it and replace it with a more appropriate law" (Mustafa al-Maraghi, n.d.). This highlights the essential role of scholars (*ulama*) in performing *ijtihad*—deriving new legal rulings by reinterpreting established texts through approaches such as *ma'nawi*, *qiyas*, *istihsan*, and *istislah* (Hamka Haq, 2007). Legal rulings ideally align with human reason, yet in cases where explicit guidance from the Qur'an, Sunnah, or consensus (*ijma*) is absent, scholars must determine appropriate rulings. This introduces the concept of *maslahah* (*public interest*), particularly *maslahah mursalah*, which supports rulings aligned with the objectives of *Sharia* even without explicit textual evidence. The legitimacy of *maslahah* remains debated among jurists, with some accepting it as a valid method in lawmaking while others reject it. The overarching goal of *Sharia* is human welfare in this world and the hereafter, emphasizing justice, compassion, wisdom, and goodness. Any regulation that replaces justice with injustice, compassion with cruelty, or public benefit with harm is not considered part of *Sharia*, regardless of claims to the contrary (Syams al-Din ibn al-Qayyim, 2008).

In daily practice, many Muslims fail to apply these rulings, particularly in inheritance distribution. For instance, in Banjarsari Village, Temanggung Regency, residents often divide inherited assets equally among children and spouses, disregarding other rightful heirs as mandated by Islamic inheritance law. Factors include ignorance, indifference, and cultural

tradition, making Islamic inheritance laws seem complex and intimidating (Ichsan, 2014). The Prophet Muhammad (peace be upon him) emphasized learning and teaching inheritance laws (*farā'idl*), noting their importance and vulnerability to being forgotten (Ibnu Majah, n.d.) Inheritance disputes are common globally, often escalating to conflicts and even violence. Islam addresses this by regulating ownership transfer, determining rightful heirs, and specifying portions of inheritance to maintain social harmony. Changes in context, time, and circumstances can influence law interpretation (Shihab, 2014). Contemporary issues, such as unequal wealth distribution among children based on need, require applying universal principles and objectives of *Sharia* (*maqāshid-based ijtihad*) to ensure fairness and public welfare. Reformulation of Islamic law may thus be necessary to address contemporary challenges without compromising its sacred principles.

## Method

This study employs a qualitative research design combining doctrinal analysis and ethnographic fieldwork to investigate inheritance practices in Banjarsari Village, Temanggung. The doctrinal component involves examining Islamic legal texts, including the Qur'an, Hadith, classical fiqh literature, and scholarly interpretations, to understand the principles of inheritance according to Islamic law. This provides a theoretical framework for analyzing the alignment and deviations of local practices from *Sharia*. The ethnographic component focuses on field-based observations and in-depth interviews with key informants, including community leaders, religious scholars, elders, and families who participate in inheritance distribution. Data collection aimed to capture both the procedural aspects of inheritance distribution and the underlying cultural values and motivations influencing local practices. Sampling was conducted purposively to ensure that participants had direct experience or authority in customary and Islamic inheritance practices. Data were collected through a combination of semi-structured interviews, focus group discussions, and direct observation of inheritance distribution processes. Data analysis followed a thematic and comparative approach. Thematic analysis identified recurring patterns, beliefs, and practices in inheritance distribution, while comparative analysis examined the consistency and divergence between customary practices (*adat*) and Islamic inheritance law (*faraid*). The study also considered social, economic, and gender-related factors influencing inheritance decisions, as well as the broader impact of local customs on family harmony and social cohesion.

## Results

### Customary Practices of Inheritance Distribution in Banjarsari Village, Temanggung

Inheritance distribution in Banjarsari Village is largely carried out according to customary law (adat), which has been practiced and passed down for generations. During the field research, the author observed local inheritance practices and conducted interviews with community leaders, religious figures, and participants involved in inheritance distribution. Although each informant provided slightly different perspectives, the overall descriptions were largely consistent. According to the local community, inheritance distribution based on customary law is more widely accepted than distribution strictly following Islamic law, although Islamic teachings are still respected (Wasito, 2023).

In Banjarsari Village, Bejen District, Temanggung Regency, inheritance is understood as all assets, both movable and immovable, owned by a deceased person and distributed to their heirs. Assets can be distributed after fulfilling obligations such as funeral arrangements, debt repayment, and execution of wills (Supriyanto, 2023). In the local context, the transfer of wealth before the death of the parent or testator is also considered part of inheritance. The community believes that distributing assets before or after death is essentially the same, as they remain the parents' wealth to be passed on to their children. Inheritance in Banjarsari is practiced in two main ways: first, distributing assets before the testator's death, and second, distributing assets after death in accordance with Islamic law (faraid) (Sadi, 2023). Inheritance is governed by legal norms that determine how property is transferred from one generation to the next. Every person experiences the legal event of death, which triggers the legal management of their rights and obligations, including those of parents or closest relatives. The management of these rights and obligations, whether upon actual or legal death, is regulated through inheritance law. Although Islamic law provides detailed guidance on inheritance, the people of Banjarsari largely continue to follow ancestral customs, which emphasize distributing assets while the parent is still alive and dividing them equally among primary heirs—both sons and daughters. The rationale for pre-death distribution is to simplify inheritance management after the parent passes away and to provide certainty for heirs regarding their shares. This practice helps prevent dissatisfaction, jealousy, and family conflicts, as financial matters are often sensitive and can affect family cohesion. Most pre-

death inheritance distributions in Banjarsari do not strictly adhere to Islamic inheritance law but are dominated by customary practices. The testator retains absolute authority over determining each heir's share. This approach emphasizes reconciliation and aims to avoid conflicts among family members. Distribution primarily involves land, farmland, and houses, as land is considered a highly valuable asset for meeting economic needs and supporting family development.

## Discussion

The pattern of inheritance distribution in Banjarsari Village, Bejen District, Temanggung Regency is as follows: First, the distribution of inheritance reflects the community's adherence to unwritten rules or customary practices (adat). Assets are typically distributed before the testator's death, based on the parent's intention to allocate their wealth peacefully while still alive. Second, the division between sons and daughters is generally equal. This approach follows established local customs and aims to prevent disputes or conflicts. The inherited assets mainly consist of land, rice fields, and houses, which are divided equally—50% to sons and 50% to daughters.

Based on the typology of legal culture, as previously discussed, the Banjarsari community can be classified as a “subject culture.” They recognize the existence of Islamic inheritance law and understand that it should guide inheritance matters, yet they continue to follow established local customs because these practices are seen as morally and socially aligned with the community norms, especially in inheritance distribution. Equal inheritance distribution in Banjarsari does not occur without foundational reasons. This practice is a long-standing tradition passed down by ancestors. Several factors influence this customary practice:

### a. Distribution Based on Customary Practices

Informants explained that the equal distribution of assets between sons and daughters stems from embedded customary values. By distributing inheritance equally, heirs perceive fairness, as there is no distinction based on gender. However, in Islamic inheritance law,

fairness (adl) is determined by rights, responsibilities, and proportionality according to need and entitlement. Fundamentally, all children have the right to inherit from their parents in accordance with their responsibilities. In inheritance law, the bilateral principle emphasizes the unity of the family system: property passes to heirs through both paternal and maternal lines. This principle underscores that gender should not obstruct inheritance rights.

According to Wasito, one of the informants, a significant factor behind equal inheritance distribution while the parent is still alive is limited knowledge about Islamic inheritance law. This highlights how deeply entrenched cultural values and mentalities—formed from early social and educational experiences—shape inheritance practices. Such values are not easily changed, as they are internalized and form the core of community identity.

#### b. Harmonious Social Relations

Harmonious social relations, referred to in Javanese as rukun, play a crucial role in maintaining social stability and preventing open conflicts. Sukir, another informant, explained: “amrih lare-lare sedoyo rumaos adil, boten wonten ingkang iri-irian amargi bagianipun benten-benten, dados enggeh dipun bagi roto mawon. Amrih tetep rukun sedoyo. Amargi menawi dipun bagi sak sampunipun tiyang sepeh sedo wedosipun wonten perselisihan antawisipun lare-lare. Ngoten ngendikanipun tiyang sepeh.” (This means: to ensure the children feel fair and do not envy each other due to differing shares, inheritance is divided equally. This helps maintain harmony because distributing assets after the parent’s death may lead to conflicts among the heirs.)

The Banjarsari community practices pre-death inheritance distribution to prevent potential disputes over property that could arise if assets were divided after the testator’s death. This approach is intended to promote the welfare (maslahah) of the heirs. By distributing assets while the parent is still alive, any dissatisfaction can be immediately addressed, as the testator is present and accountable for the division.

### c. Analysis of Inheritance Distribution Practices in Banjarsari Village from the Perspective of Islamic Law and *Maqāṣid al-Sharī‘ah*

The inheritance distribution practices in Banjarsari Village, Temanggung Regency, illustrate a complex interaction between Islamic inheritance law (*farā’id*) and customary law (*adat*). While Islamic law provides detailed and fixed provisions regarding inheritance shares based on divine revelation, the local community prioritizes social harmony, perceived fairness, and conflict avoidance through equal pre-death distribution of assets. This phenomenon reflects legal pluralism, where religious norms and customary practices coexist and influence one another in shaping legal behavior. From the perspective of Islamic jurisprudence, inheritance law is considered a *ta‘abbudī* domain with explicit textual foundations in the Qur‘an and Sunnah, particularly in Surah al-Nisā’ (4:11–12, 176). These provisions are traditionally viewed as definitive (*qat‘ī*) in both meaning and application. However, Islamic legal theory also recognizes the role of *ijtihād* in addressing situations not explicitly regulated or where social realities necessitate contextual interpretation (Haq, 2007). The Banjarsari practice of distributing assets prior to death can be understood as falling within the category of *hibah* (inter vivos gift), which is permissible in Islamic law as long as it does not aim to undermine the rights of legitimate heirs (*hīlah li ibṭāl al-ḥaqq*) (al-Qaradawi, 1999).

The community’s preference for equal distribution between sons and daughters before death reflects a culturally embedded understanding of justice as sameness rather than proportionality. In contrast, Islamic inheritance law conceptualizes justice (*‘adl*) not as numerical equality, but as proportional distribution based on responsibilities and socio-economic obligations borne by heirs (Rofiq, 2017). Nonetheless, Islamic legal maxims emphasize that legal rulings must aim at realizing benefit and preventing harm (*jalb al-maṣāliḥ wa dar’ al-mafāsid*). Ibn al-Qayyim asserts that any ruling that leads to injustice, harm, or hardship contradicts the essence of *Sharī‘ah*, even if it appears to be legally justified (Ibn al-Qayyim, 2008). When examined through the lens of *maqāṣid al-sharī‘ah*, the inheritance practices in Banjarsari reveal a strong orientation toward preserving family unity (*hifż al-nasl*), protecting property (*hifż al-māl*), and maintaining social harmony (*hifż al-‘ird*

wa al-silm al-ijtimā'ī). Jasser Auda emphasizes that the objectives of Islamic law prioritize holistic welfare, flexibility, and responsiveness to social contexts rather than rigid textualism (Auda, 2008). In this regard, the community's approach aligns with *maqāṣid*-based reasoning, even though it departs from formal *farā'iḍ* calculations. Furthermore, the decision to distribute inheritance while the testator is still alive serves a preventive legal function. By doing so, potential disputes among heirs are minimized, as dissatisfaction can be directly resolved in the presence of the parent. This practice resonates with the principle of *sadd al-dhārā'i* (blocking the means to harm), which allows for legal measures aimed at preventing foreseeable conflicts and social discord (Shihab, 2014). The emphasis on *rukun* (social harmony) as a guiding moral value demonstrates how local wisdom functions as a mechanism for conflict resolution within the family structure. In terms of legal culture, the Banjarsari community can be categorized as exhibiting a "subject legal culture," wherein individuals acknowledge the authority of Islamic law but selectively adapt its application to align with deeply rooted customs and communal values. This selective adherence is not necessarily a rejection of Islamic law, but rather an attempt to harmonize religious norms with lived social realities. As noted by Ichsan (2014), limited knowledge of Islamic inheritance law and perceptions of its complexity often contribute to the persistence of customary practices over formal religious prescriptions.

## Conclusion

Inheritance distribution practices in Banjarsari Village, Temanggung Regency, are predominantly governed by customary law, with assets commonly distributed equally among sons and daughters prior to the testator's death. Although this practice does not fully conform to the formal provisions of Islamic inheritance law (*farā'iḍ*), it is deeply rooted in local cultural values that prioritize social harmony, perceived fairness, and conflict prevention. From the perspective of *maqāṣid al-sharī'ah*, this customary approach reflects an effort to preserve family unity, protect property, and promote public welfare (*maṣlahah*). The findings indicate that the community's adherence to *adat* represents a contextual and pragmatic form of legal reasoning, illustrating the dynamic interaction between Islamic law and local tradition. Consequently, the study underscores the importance of context-sensitive and *maqāṣid*-oriented approaches in the application of Islamic inheritance law within plural legal settings.

## References

Al-Asy'ari, H. A. (2014). *Alh, Al-Qur'an dan terjemahannya* (Cet. I). Bogor: Lembaga Percetakan Al-Quran Kemenag RI.

Al-Bajuri, I. (t.t.). *Hasyiah al Bajuri ala Ibnu Qasim* (Juz II). Surabaya: Darul 'Ilm.

Al-Maraghi, A. M. (t.t.). *Tafsir al-Maraghi* (Juz I). Beirut: Dar al-Fikr.

Al-Qayyim, S. a.-D. ibn. (1973). *I'lam al-Muwaqqi'in* (Ed. T. A. R. Sa'd). Beirut: Dar al-Jil.

Ash-Shiddieqy, T. M. H. (2010). *Fiqh Mawaris; Hukum Pembagian Warisan Menurut Syariat Islam*. Semarang: Pustaka Rizki Putra.

Asiah, N. (2016). *Jurnal Hukum Diktum*, 14. Makasar: UIN Alaudin Makasar.

Athaillah, H. A. (2005). *Mengenal 'Ulum Alquran* [Makalah]. Program Pascasarjana IAIN Antasari Banjarmasin.

Auda, J. (2008). *Membumikan Hukum Islam Melalui Maqasid Syariah*. Bandung: Mizan Media Utama (MMU).

El Fadl, K. M. A. (2004). *Atas Nama Tuhan; Dari Fikih Otoriter ke Fikih Otoritatif* (Cet. 1). Jakarta: PT Serambi Ilmu Semesta.

Haq, H. (2007). *Al-Syatibi; Aspek Teologi Konsep Maslahah dalam Kitab Al-Muwafaqat*. Jakarta: Erlangga.

Hazairin. (1982). *Hukum Kewarisan Bilateral Menurut al-Qur'an dan Hadis* (Cet. IV). Jakarta: Tintamas.

Kompilasi Hukum Islam Indonesia. (2001). Direktorat Pembinaan Peradilan Agama Islam Ditjen Pembinaan Kelembagaan Islam, Departemen Agama.

Maulana, M. I. (2014). *Pintar Fiqh Waris*. Kediri: Al-Azizah Press.

Parman, A. (1995). *Kewarisan Dalam Al-Qur'an: Suatu Kajian Hukum dalam Pendekatan Tafsir Tematik*. Jakarta: PT Raja Grafindo Persada.

Prodjodikoro, W. (1966). *Hukum Warisan di Indonesia* (Cet. V). Bandung: Sumur.

Sabiq, S. (1983). *Fiqh al-Sunnah*. Beirut: Darul Fikr.

Salman, A. A. M. (t.t.). *Kunuzu al Maaliyah Fi al Faraid al Jaliyah*. Riyad: Mahfuzah.

Sarmadi, A. S. (2013). *Hukum Waris Islam di Indonesia: Perbandingan Kompilasi Hukum Islam dan Fiqih Sunni*. Yogyakarta: Aswaja Pressindo.

Shahrur, M. (2008). *Nahw Usul Jadidah Li al-Fiqih al-Islami* (Alih bahasa S. Syamsudin dkk., Cet. V). Yogyakarta: eLSQ Press.

Shihab, M. Q. (2014). *M. Quraish Shihab Menjawab 1001 Soal Keislaman Yang Patut Anda Ketahui* (Cet. XIV). Jakarta: Lentera Hati.

Soepomo. (1996). *Bab-Bab tentang Hukum Adat*. Jakarta: Universita.

Syarifuddin, A. (1999). *Ushul Fiqh II*. Jakarta: Logos Wacana Ilmu.

Usman, R. (t.t.). *Hukum Kewarisan Islam Dalam Dimensi Kompilasi Hukum Islam*. Bandung: CV Mandar Maju.