

Justice and Agreement in Islamic Inheritance Distribution: An Analysis of Religious Court Decisions in Indonesia

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Abstract

This research departs from the debate on the tension between normative inheritance division (faraidh) and the demands of substantive justice in contemporary Muslim family dynamics. The main problem of this research is how the principle of justice is manifested in the distribution of inheritance based on mutual agreement (ash-shulhu) and how it is implemented in the practice of religious justice. This study uses normative-empirical legal methods with legislative, conceptual, and case study approaches to practices in the Religious Court. The findings of the study show that the principle of justice in inheritance agreements is built on the principles of voluntariness, willingness, equality of rights, and benefits, which are substantively in line with the values in the Compilation of Islamic Law (KHI). In practice, the implementation of inheritance agreements is carried out through mediation mechanisms in contentious cases or through reinforcement by judges in the form of decisions or determinations, as long as it does not violate sharia principles and the absolute rights of heirs. This approach has proven effective in preventing protracted conflict and creating more contextual justice. This study contributes to the debate on the reconciliation between normative Islamic inheritance law and considerations of sociological justice in contemporary Muslim society. Theoretically, this study emphasizes that the concept of justice in Islamic inheritance law is not rigid, but adaptive through an agreement mechanism that remains in the sharia corridor. The recommendation of this study is the need to strengthen the role of mediation and more explicit judicial guidelines in accommodating substantive justice-based inheritance agreements in the religious justice environment.

Keywords: Substantive Justice; Islamic Inheritance Law; Ash-Shulhu; Religious Courts.

Abstrak

Penelitian ini berangkat dari perdebatan mengenai ketegangan antara pembagian waris secara normatif (faraidh) dan tuntutan keadilan substantif dalam dinamika keluarga Muslim kontemporer. Permasalahan utama penelitian ini adalah bagaimana prinsip keadilan diwujudkan dalam pembagian harta waris berbasis kesepakatan bersama (ash-shulhu) serta bagaimana implementasinya dalam praktik peradilan agama. Penelitian ini menggunakan metode hukum normatif-empiris dengan pendekatan perundang-

undangan, konseptual, dan studi kasus terhadap praktik di lingkungan Pengadilan Agama. Temuan penelitian menunjukkan bahwa prinsip keadilan dalam kesepakatan waris dibangun atas asas sukarela, kerelaan (antaradin), persamaan hak, dan kemaslahatan, yang secara substantif sejalan dengan nilai-nilai dalam Kompilasi Hukum Islam (KHI). Dalam praktiknya, implementasi kesepakatan waris dilakukan melalui mekanisme mediasi dalam perkara kontentius maupun melalui penguatan oleh hakim dalam bentuk putusan atau penetapan, sepanjang tidak melanggar prinsip syariah dan hak mutlak ahli waris. Pendekatan ini terbukti efektif dalam mencegah konflik berkepanjangan serta menciptakan keadilan yang lebih kontekstual. Studi ini berkontribusi pada perdebatan tentang rekonsiliasi antara hukum warisan Islam normatif dan pertimbangan keadilan sosiologis dalam masyarakat Muslim kontemporer. Secara teoretis, penelitian ini menegaskan bahwa konsep keadilan dalam hukum waris Islam tidak bersifat kaku, melainkan adaptif melalui mekanisme kesepakatan yang tetap berada dalam koridor syariah. Rekomendasi penelitian ini adalah perlunya penguatan peran mediasi dan pedoman yudisial yang lebih eksplisit dalam mengakomodasi kesepakatan waris berbasis keadilan substantif di lingkungan peradilan agama.

Kata Kunci: Keadilan Substantif; Hukum Waris Islam; Ash-Shulhu; Peradilan Agama.

INTRODUCTION

The state of Indonesia is a state of law that places law as the basis for the implementation of the life of the nation and state. This principle emphasizes that every aspect of people's lives, including in the field of family law, must be subject to the provisions of applicable law. In this context, the law not only serves to create certainty, but also to realize justice and benefits for society at large, including in the regulation of Islamic heritage.¹

In Islamic law, the distribution of inheritance has been regulated normatively through the concept of faraidh which is sourced from the Qur'an and Sunnah, and codified in the Compilation of Islamic Law (KHI), especially Article 176. This provision establishes a clear proportion of the distribution for the heirs. However, Article 183 of the KHI provides space for the heirs to make an agreement on the distribution of inheritance through the peace channel after each knows his share. This shows that there is flexibility in the practice of inheritance distribution in Indonesia.²

¹ Article 1 paragraph (3), *Constitution of the Republic of Indonesia 1945* (Indonesia, 1945); Marhainis Abdul Hay, *Civil Law*, ed. UPN Veteran Family Development Foundation (Jakarta, UPN Veteran, 1984). Sec. 12.

² In the Qur'an, the distribution of inheritance is very clear in the determination of the distribution of inheritance, namely 1/2 (one-half), 1/4 (one-fourth), 1/6 (one-

In practice, the distribution of inheritance does not always follow the normative provisions of faraidh. Social reality shows that heirs often choose to settle the division of inheritance through mutual agreement, both outside and inside religious justice forums. This agreement is generally based on considerations of justice, economic conditions, and each heir's contribution to the heir during his or her lifetime.³

A number of previous studies have focused more on the normative study of Islamic inheritance law, especially related to division based on the concept of faraidh and analysis of the provisions in the KHI. These studies generally focus on doctrinal and textual aspects, including the interpretation of Qur'anic verses and the opinions of classical scholars on the division of inheritance.⁴

However, studies that specifically examine the practice of inheritance distribution agreements in religious courts, including how judges interpret and consider such agreements in their rulings, are still relatively limited. In fact, the dynamics of judicial practice show that the agreement of the parties is often an important factor in resolving inheritance disputes.

However, existing studies on Islamic inheritance law largely focus on normative faraidh distribution, while limited attention has been given to agreement-based inheritance settlement and its judicial interpretation in religious courts. This gap points to the need for further research into

sixth), 1/8 (one-eighth), 1/3 (one-third), 2/3 (two-third). In Cik Hasan Bisri, *Compilation of Islamic Law and Religious Justice in the National Legal System* (Jakarta: Logos Wacana Ilmu, 1999) 68; M. S. Syamsudin, *Methodology of Contemporary Islamic Fiqh* (Jakarta: UIN Syarif Hidayatullah, 2011). 198; Ministry of Religious Affairs, *Compilation of Islamic Law (Indonesia, issued 2018)*. Article 176 reads: If a girl is only one she gets half of the share, if two or more of them together get two-thirds of the share, and if a girl is together with a boy, then the boy's share is two to one with the girl; Article 183 of the KHI states that the distribution of inheritance is said to be valid and permissible, if all families agree to settle it in a family or peaceful way.

³ Muhammad Amin Suma, *Islamic Heritage Legal Justice in Text and Context Approach* (Jakarta: Rajawali Pers, 2013), Cet.1, p. 18; West Jakarta Religious Court Case Decision Number 251/Pdt.G/2014/PA. JB; Labib Fahmi, "Emilio Betti's Hermeneutics and Its Application in Interpreting the 2:1 Inheritance System in Surah an-Nisa Verse 11", *Journal of Islamic Law Studies and Research*, II, No.1 (October 2018), p.145.

⁴ D. Danielle Samsoeri, *Gender Justice Law Enforcement; A Year of Law Enforcement Strengthening Program*. (Jakarta: Komnas Perempuan-LBH APIK Jakarta, LBPP DERAP-Warapsari-Convention Watch-PKWJ UI., 2005).²¹ The Gospel of Jesus Christ

how positive law and judicial practice accommodate inheritance sharing agreements.

One concrete example can be seen in the case of inheritance disputes at the West Jakarta Religious Court, which then continues to the level of appeal and cassation. This case shows that there is a difference in the judge's consideration in determining the share of the heirs, especially regarding the granting of the share that considers the aspect of sacrifice and the role of the heir in caring for the heir, compared to the normative provisions that have been determined.⁵

The difference in verdicts between the courts of first instance, appeals, and cassation reflects the tension between the principles of legal certainty and substantive justice. On the one hand, Islamic inheritance law has set a definite part, but on the other hand, judges are faced with a social reality that demands a consideration of justice based on the contributions and factual conditions of the heirs.

Based on this description, this study aims to analyze how the inheritance distribution agreement is considered in religious court decisions and the extent to which these considerations are in line with the principle of justice in Islamic inheritance law. This research is expected to make a theoretical contribution to the development of Islamic inheritance law studies, as well as a practical contribution for the judiciary in handling agreement-based inheritance disputes.

RESEARCH METHODS

This study uses a qualitative research design with a normative-empirical legal research approach that combines doctrinal legal analysis, statutory approach, and case study approach. This approach is used to examine Islamic legal norms related to the conceptual division of tirkah and analyze its implementation in practice in society. The nature of this research is descriptive-analytical, which provides a systematic overview of the application of the principles of justice and legal certainty in Islamic inheritance law, as well as analyzing the suitability between the applicable legal norms and the practice of their settlement.

The primary data source was obtained directly from court decisions No. 251/Pdt.G/2014/PA. JB, No. 33/Pdt.G/2015/PTA. JK is

⁵ Muhammad Amin Suma, *Islamic Heritage Legal Justice in Text and Context Approach* (Jakarta: Rajawali Pers, 2013), Cet.1, p. 18; West Jakarta Religious Court Case Decision Number 251/Pdt.G/2014/PA. JB; Labib Fahmi, "Emilio Betti's Hermeneutics and Its Application in Interpreting the 2:1 Inheritance System in Surah an-Nisa Verse 11", *Journal of Islamic Law Studies and Research*, II, No.1 (October 2018), p.145.

apart from religious court judges, legal practitioners, religious leaders, and parties who have been involved in inheritance distribution disputes. The secondary data was obtained through literature studies which included primary legal materials (laws and regulations related to Islamic heritage), secondary legal materials (books, scientific journals, and previous research results), and tertiary legal materials (legal dictionaries and encyclopedias). Data collection techniques are carried out through in-depth interviews, observations, and documentation of religious court decisions and documents related to the distribution of inheritance.

The data analysis technique used is qualitative analysis with an interactive model, namely through the stages of data reduction, data presentation, and conclusion drawn. The data that has been collected is analyzed normatively to examine the conformity with the principles of Islamic law, as well as empirically to understand implementation practices in the field. Furthermore, a comparative interpretation is carried out between normative provisions and empirical facts to identify gaps, obstacles, and solutions in the application of the distribution of tirkah, so that comprehensive and systematic conclusions are obtained in accordance with the research objectives.

RESULTS AND DISCUSSION

Normative Framework of Islamic Inheritance Law in Indonesia

The normative framework of Islamic inheritance law in Indonesia exhibits complex and distinctive characteristics, which cannot be separated from the pluralistic national legal system. In this context, the existence of the Compilation of Islamic Law (KHI) as a material law within the Religious Court is an important instrument in integrating the principles of fiqh mawaris into the positive legal system. The KHI not only serves as a normative guideline, but also as a bridge between the classical doctrines of Islamic law and the needs of contemporary legal practice in Indonesia.⁶

⁶ Dian Rahmat Nugraha, "DELEGITIMATION WASIAH LETTER OF CHILDREN ADOPTED (Case Study of the Decision of the Supreme Court of the Republic of Indonesia. No.311 K /PDT/1996)," *Al Hakam The Journal of Islamic Family Law and Gender Issues* 1, no. 1 (April 5, 2021): 32–52, <https://doi.org/10.35896/alhakam.v1i1.177>; Afikri Mainuri et al., "Sengketa Waris Tanpa Anak: Tinjauan Hukum Islam Dan Hukum Perdata Indonesia," *Bulletin of Islamic Law* 2, no. 2 (November 10, 2025): 97–106, <https://doi.org/10.51278/bil.v2i2.1813>; Sakinah Azzahra Hsb and Nur Azizah, "Between Nasab and Heirs: Examining the Status of the Surrogate Mother's in Contemporary Islamic Law," *Ilmu Kesyariahan Dan Keperdataan* 11, no. 1 (2025); Nabil Palasenda, Aghisna Cahya Kamila, and Fahmi Nurfuadi, "Analysis of Maqasid

Conceptually, Islamic inheritance law in KHI is rooted in the principle of *faraidh*, which is a system of inheritance distribution that has been explicitly determined in the main sources of Islamic law, namely the Qur'an and Sunnah. This principle emphasizes that each heir has certain fixed shares, so that the division of property is not completely left to human will. In this context, KHI adopts such a normative structure as the main basis in inheritance arrangements.⁷

For example, the provision regarding the comparison of shares between boys and girls as stipulated in Article 176 of the KHI directly reflects the principles contained in the Qur'an. The 2:1 ratio between boys and girls is not only understood as a mathematical measure, but also as a reflection of the socio-economic responsibilities in the Islamic family structure. Boys normatively bear the responsibility of maintenance, thus obtaining a larger share.⁸ However, in the modern social context, the interpretation of this provision is often the object of

Shari'ah on Religious Court Decisions on the Granting of Compulsory Wills to Non-Muslim Heirs," *DIKTUM: Jurnal Syariah Dan Hukum* 23, no. 2 (March 7, 2025): 132–48, <https://doi.org/10.35905/diktum.v23i2.11577>; Sohrah, M. Saleh Ridwan, and Musrianaa, "Formulation of *Ihdād* Rights for Career Women in Counter Legal Draft Compilation of Islamic Law," *PAREWA SARAQ: JOURNAL OF ISLAMIC LAW AND FATWA REVIEW* 1, no. 2 (November 30, 2022): 107–17, <https://doi.org/10.64016/parewasaraq.v1i2.8>.

⁷ F Khairudin et al., "Relational Justice in Qur'anic Inheritance: A Maqāṣidī–Reciprocal Reinterpretation of QS. An-Nisā' (4): 11–12 through the Basuluh Tradition of the Banjar Community," *Jurnal Ushuluddin* 33, no. 2 (2025); Frida Azmil Franola, Siti Rohmah, and Shinta Puspita Sari, "Supported vs Substituted: The Urgency of Regulating Limited Guardianship for Individuals with Psychosocial Disabilities in Islamic Inheritance," *Sakina: Journal of Family Studies* 9, no. 1 (February 26, 2025): 17–35, <https://doi.org/10.18860/jfs.v9i1.14186>; Amar Yusuf Abdurrohman et al., "The Law of Adoption of Children Out of Wedlock in the Perspective of Islamic and Indonesian Law," *An-Nisa: Journal of Islamic Family Law* 2, no. 4 (December 21, 2025): 299–314, <https://doi.org/10.63142/an-nisa.v2i4.347>.

⁸ Sari Maisyarah Damanik, Hasim Purba, and Rosnidar Sembiring, "Juridical Analysis of Revocation of Guardianship and Transfer of Guardianship to Grandmother in the Context of Protection of Orphan Heirs' Rights," *Journal Of Science And Social Research* 8, no. 1 (2025); Sova Fauziah, "The Paradox of the Application of Inheritance Law in Indonesia: Between the National Legal System and Islamic Law Principles," *JILPers: Journal of Interdisciplinary Legal Perspectives* 1, no. 2 (2025); Haris Hidayatulloh, "Reconciling Religion and Law: The MUI Fatwa and the Constitutional Court's Ruling on Children Born Out of Wedlock," *International Journal of Scientific Research and Management (IJSRM)* 13, no. 08 (August 12, 2025): 730–36, <https://doi.org/10.18535/ijssrm/v13i08.11a01>.

critical discourse, especially related to the issue of gender justice and the changing role of the economy in the family.

On the other hand, KHI also accommodates flexibility through the provisions of Article 183, which provides space for the heirs to complete the distribution of inheritance based on mutual agreement. This provision shows that although Islamic inheritance law has a rigid aspect, the system is not completely closed to social dynamics. With the existence of an agreement mechanism, the law provides space for the values of deliberation and substantive justice to play a role in determining the final outcome of inheritance distribution.⁹

The dualism between fixed rules and discretionary rules is one of the main characteristics of KHI. From the perspective of legal theory, this condition can be understood as a form of harmonization between the legal-formal approach and the sociological approach. On the one hand, the law sets clear and definite standards to ensure legal certainty. On the other hand, the law also opens up space for adaptation to the concrete conditions of the parties, so that it can achieve more contextual justice (substantive justice).¹⁰

In judicial practice, this dualism gives rise to interesting dynamics. Religious Court judges not only play the role of textual implementers of norms, but also as interpreters who consider aspects of justice and

⁹ Achmad Rizky Airlangga, Faiq Muhammad Zufar, and Syahputra Aditya Kusrin Surbakti, "The Transformation of Religious Judicial Authority After the 1974 Marriage Law," *Presidential Journal: Journal of Law, State Administration, and Public Policy* 2, no. 4 (December 31, 2025): 235–42, <https://doi.org/10.62383/presidensial.v2i4.1375>; Aulia Rahmaini, Ahmad Zuhri, and Nur Aisah Simamora, "The Concept of Tabannī in Tafsir An-Nur," *Kamaya: Journal of Religious Studies* 8, no. 4 (September 19, 2025): 18–30, <https://doi.org/10.37329/kamaya.v8i4.4863>; Nabila Salma Amaliya, "A Comparative Study on the Civil Relationship Between Fathers and Their Biological Children in Southeast Asia and the Middle East," *Legal Brief* 14, no. 4 (2025).

¹⁰ Made Chersyana Dwidiantari Hardika and Kadek Julia Mahadewi, "Legal Protection of Children Born Through Surrogacy: A Comparative Legal Analysis," *JOURNAL AKTA* 12, no. 3 (September 9, 2025): 808, <https://doi.org/10.30659/akta.v12i3.46289>; Yilda Riskanda et al., "Reconceptualizing Mandatory Bequests for Children of Unregistered Marriages: Islamic Family Law Responses to Supreme Court Circular Letter No. 3 of 2023," *Al Ushuliy: Journal of Sharia and Law Students* 4, no. 2 (December 26, 2025): 113–24, <https://doi.org/10.31958/alushuliy.v4i2.16369>; Aliem Zainuddin, Nur Hadi Cahyono, and Haidar Khairullah, "A Study of Fiqh Waris in the Division of Property in Multicultural Families in Indonesia: A Sociological and Legal Approach," *Bharasa Multidisciplinary Journal* 3, no. 2 (2024).

benefits. In some rulings, there is a tendency for judges to encourage settlement through family agreements, especially in cases involving complex emotional relationships.¹¹ This shows that Article 183 of the KHI is not just a complementary norm, but has strong practical significance in the settlement of inheritance disputes.

Furthermore, the flexibility provided by the KHI can be seen as a form of institutional *ijtihad* in the context of national law. By accommodating agreement as a settlement mechanism, KHI implicitly acknowledges that the application of law cannot be separated from social reality. In an Indonesian society that upholds family values, an approach that is too rigid has the potential to cause prolonged conflicts.¹² Therefore, the existence of flexible norms is an important instrument to maintain social harmony.

However, this flexibility also poses its own challenges, especially related to potential deviations from the basic principles of *faraidh*. In some cases, the agreements reached do not necessarily reflect justice, but rather are the result of social pressure or the dominance of certain parties. This raises critical questions about the extent to which the state through the judiciary can ensure that the agreement truly reflects the free will of

¹¹ Fatawi Fatawi, B. Syafuri, and Ahmad Hidayat, "Intertextuality of Dhawabith Fiqhiyah in Mahram Breastfeeding: A Study of Article 8 of the 1974 Marriage Law and Article 39 of KHI," *Al-Mazaahib: Jurnal Perbandingan Hukum* 13, no. 2 (December 1, 2025): 150–72, <https://doi.org/10.14421/al-mazaahib.v13i2.3819>; St. Syahrini Usman, "Kontestasi Hibah Dan Faraidh Dalam Sengketa Waris: Analisis Normatif Dan Praktik Peradilan Agama Di Indonesia," *Bulletin of Islamic Law* 2, no. 2 (November 18, 2025): 119–30, <https://doi.org/10.51278/bil.v2i2.2048>; Sri Hidayati et al., "Reconstructing Divine Authority in Indonesian Islamic Law: A Critical- Maqāṣid Epistemology and the Reinterpretation of Wasiat Wājibah for Non-Muslim Heirs," *JURNAL INDO-ISLAMIKA* 15, no. 2 (December 26, 2025): 244–58, <https://doi.org/10.15408/jii.v15i2.49045>; Sarpika Datumula, "Islamic and Customary Inheritance Law: Addressing Differences and Similarities in the Distribution of Property," *Journal of Nafaqah* 2, no. 1 (June 30, 2025): 10–16, <https://doi.org/10.62872/a22mze83>.

¹² Muhamad Riandi and Rusdiyah Rusdiyah, "The Interaction between Islam and Local Wisdom in Indonesia: A Normative-Philosophical Study," *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 2, no. 1 (2025); Megawati Atiyatunnajah and Sidik Setyawan, "Islamic Inheritance Law and Its Implications on the Rights of Adopted Children in Indonesia Perspective on Adopted Children Enforcement in The Law of Inheritance," *LEGAL BRIEF* 12, no. 1 (April 28, 2023): 97–112, <https://doi.org/10.35335/legal.v12i1.768>; Basri Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice," *Journal of Nafaqah* 2, no. 1 (June 30, 2025): 17–29, <https://doi.org/10.62872/mvxfre02>.

the parties.¹³ In other words, an effective control mechanism is needed to prevent the injustice behind the formal agreement.

In addition, legal pluralism in Indonesia also affects the application of Islamic inheritance law. Although the KHI applies to Muslims, in practice there is often interaction with other legal systems, such as customary law and Western civil law. This condition creates space for choice of law, which in turn can affect the outcome of inheritance.¹⁴ In this context, KHI must be able to compete normatively with other legal systems, both in terms of certainty and justice offered.

From a methodological perspective, the analysis of the normative framework of KHI shows that Islamic inheritance law in Indonesia is not monolithic, but dynamic and adaptive. The approach used in the KHI reflects an effort to integrate Islamic normative values with modern legal principles. This can be seen from the systematic use of legal language, a clear article structure, and recognition of alternative settlement mechanisms.¹⁵

¹³ Hairu Ramadhan et al., "Penentuan Hukum Yang Berlaku Dalam Sengketa Waris Internasional Di Indonesia," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 3, no. 4 (2025); Rahmi Rahmi et al., "Legal Dynamics of Financial Responsibility and Marital Property in Marriage in Indonesia," *USRATY: Journal of Islamic Family Law* 3, no. 1 (June 30, 2025): 14–26, <https://doi.org/10.30983/usraty.v3i1.8948>; Teuku Hafid Hududillah et al., "Reconstructing Islamic Family Law in ASEAN: A Normative Analysis of Marriage, Divorce, and Inheritance in Plural Legal Systems," *ASEAN Journal of Islamic Studies and Civilization (AJISC)* 02, no. 2 (2025).

¹⁴ Akhmad Jalaludin, "From Patrilineal to Bilateral: A New Balance of Islamic Inheritance Law in Indonesia's Religious Court," *The Indonesian Journal of Islamic Family Law* 14, no. 2 (2024); Taufiq Taufiq et al., "LEGAL PLURALISM AND TEXTUALISM: CONTRASTING APPROACHES TO ISLAMIC INHERITANCE LAW IN INDONESIA AND OMAN," *Kanun Jurnal Ilmu Hukum* 27, no. 2 (August 28, 2025): 225–47, <https://doi.org/10.24815/kanun.v27i2.47546>; Jum Anggriani et al., "Digitalization of Land Certification: Legal Perspectives from Islamic, Positive, and Administrative Law," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (September 3, 2025): 606–30, <https://doi.org/10.29240/jhi.v10i2.12921>.

¹⁵ Wiwit Pratiwi and Sherly Nelsa Fitri, "Towards the Unification of Inheritance Law in Indonesia: Challenges and Opportunities in the Context of Religious and Cultural Diversity," *INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY RESEARCH AND ANALYSIS* 06, no. 12 (December 26, 2023), <https://doi.org/10.47191/ijmra/v6-i12-55>; Fuad Luthfi, Ahmadi Hasan, and Jalaluddin Jalaluddin, "Tantangan Dan Regulasi Dalam Pewarisan Aset Digital: Studi Perbandingan Hukum Positif Dan Hukum Islam," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 4 (December 28, 2024): 2212–25, <https://doi.org/10.62976/ijjel.v2i4.823>; Hendi Sugianto et al., "Islamic Law And Gendered Inheritance: An-Taradhin as Breakthrough for Women's Rights Disputes in

In an academic context, these findings strengthen the argument that the codification of Islamic law in Indonesia is not just a process of translating classical norms into written form, but also a process of transformation that involves reinterpretation and adaptation. KHI not only reproduces the doctrine of fiqh, but also constructs a new legal framework that is relevant to the social and political context of Indonesia.¹⁶

Overall, the results of the analysis show that the normative framework of Islamic inheritance law in KHI has two main dimensions, namely the normative dimension that is fixed and the adaptive dimension that is flexible. These two dimensions are not in conflict with each other, but complement each other in realizing the goals of law, namely justice, certainty, and utility.¹⁷ However, the implementation of these two

Java, Bali, and Sumatra,” *Al-Istinbath: Jurnal Hukum Islam* 10, no. 2 (October 8, 2025): 700–731, <https://doi.org/10.29240/jhi.v10i2.12614>; Abdul Ali Mutammima Amar Alhaq et al., “Pluralism and Justice in Indonesian Inheritance Law: A Comparative Analysis of Customary, Islamic, and Civil Systems,” *KALOSARA: Family Law Review* 5, no. 2 (September 30, 2025): 43–50, <https://doi.org/10.31332/kalosara.v5i2.11434>.

¹⁶ Akhmad Dulfikar et al., “Sanctions for Inheritance Embezzlement in Indonesia: Analysis of Qiyas and Maslahah,” *Jurnal Hukum Islam* 23, no. 1 (2025); Yusida Fitriyati et al., “Reconsidering Inheritance Equality: Gender Justice in Religious Court Decisions through the Lens of Maqashid Al-Shariah,” *Nurani: Jurnal Kajian Syari’ah Dan Masyarakat* 25, no. 1 (May 1, 2025): 122–40, <https://doi.org/10.19109/nurani.v25i1.27133>; Rusdi Rizki Lubis et al., “Reconstruction of Obligatory Bequest in the Perspective of the Objectives of Islamic Law: Contextualizing Islamic Law in a Case Study of The Secret Wife in Polygamous Marriage,” *Jurnal Ilmiah Mizani: Wacana Hukum, Ekonomi Dan Keagamaan* 12, no. 1 (April 16, 2025): 64, <https://doi.org/10.29300/mzn.v12i1.3809>; Zainal Azwar et al., “Child Filiation and Its Implications on Maintenance and Inheritance Rights: A Comparative Study of Regulations and Judicial Practices in Indonesia, Malaysia, and Turkey,” *Journal of Islamic Law* 5, no. 1 (February 29, 2024): 62–85, <https://doi.org/10.24260/jil.v5i1.2326>.

¹⁷ Jibrán Hafidz and Muhammad Haikal Gaddafi Harahap, “Reconceptualizing Inheritance Law in Indonesia’s Islamic Compilation (KHI): A Normative Reassessment Through the Lens of Ibn Mas’ud’s Jurisprudence,” *Sakina: Journal of Family Studies* 9, no. 3 (September 1, 2025): 272–92, <https://doi.org/10.18860/jfs.v9i3.16043>; Maizidah Salas, Susilo Wardani, and Teguh Suroso, “Harmonization of Islamic Inheritance Law, Customary Law and National Law Normative Review of the Compilation of Islamic Law, Customary Law and Civil Code,” *Serambi Legal Journal* 18, no. 2 (2025); Fatahullah, Adi Sulistiyono, and Burhanudin Harahap, “Reform of Islamic Inheritance Law: The Influence of Customary Law on the Institution of Obligatory Will in Islamic Law,” *IUS Journal of Law and Justice Studies* 13, no. 1 (April 29, 2025): 259–74, <https://doi.org/10.29303/ius.v13i1.1695>.

dimensions in judicial practice requires a careful balance so as not to cause distortions of the basic principles of Islamic inheritance law.

Thus, this discussion emphasizes that KHI as a normative framework has great potential to become a legal instrument that is responsive to the needs of the community. However, its effectiveness depends heavily on the quality of interpretation and application by the judiciary, as well as the legal awareness of the community in understanding and implementing inheritance provisions fairly and responsibly.

Agreement-Based Inheritance Distribution in Religious Courts

The practice of agreement-based inheritance distribution in the religious court environment is a phenomenon that is increasingly emerging in the dynamics of Islamic family law in Indonesia. Although classical Islamic inheritance law has been governed in detail through the mathematical and normative faraidh system, social reality shows that not all inheritance matters are resolved with this approach.¹⁸ Instead, there is a strong tendency to resolve disputes through a mechanism of agreement between the parties known in the treasures of Islamic law as *ash-shulh*. This phenomenon demands an analysis that is not only normative, but

¹⁸ Muhammad Nasrulloh and Doli Witro, "EQUAL DISTRIBUTION OF INHERITANCE OF BOYS AND GIRLS FROM THE PERSPECTIVE OF ISLAMIC BENEFITS AND JUSTICE: An Analysis of Decision 3052/Pdt.G.2010/PA. Malang Regency," *AL-MAQASID Journal: Journal of Sharia and Civil Sciences* 7, no. 2 (April 4, 2022): 200–216, <https://doi.org/10.24952/almaqasid.v7i2.4350>; Arif Hariyanto and Umla'ul Nikmah, "IMPLEMENTATION OF ARTICLE 185 OF KHI CONCERNING SUBSTITUTE HEIRS (PLAATSVERVULLING) IN THE BANYUWANGI RELIGIOUS COURT," *Al-Hukmi : Journal of Islamic Economic and Family Law* 1, no. 2 (November 28, 2020), <https://doi.org/10.35316/alhukmi.v1i2.1184>; Shafira Meidina Rafaldini, Anita Afriana, and Pupung Faisal, "Inheritance Certificates Containing Incorrect Information Associated with Their Probative Strength as Authentic Deeds," *ADHAPER: Journal of Civil Procedure Law* 6, no. 1 (July 16, 2020): 55, <https://doi.org/10.36913/jhaper.v6i1.101>; Samsul Latif, "Implementation of Heirs of Dzawil Furudh and Dzawil Arham in Islamic Inheritance," *Jiic: Journal of Intellectuals Insan Cendikia* 2 (2025); Suherman Suherman and Idul Adnan, "ANALYSIS OF INHERITANCE DISPUTE SETTLEMENT FROM THE PERSPECTIVE OF ISLAMIC LAW AND CIVIL LAW IN INDONESIA," *Al-Muqaronah: Journal of Comparative Schools and Law* 3, no. 1 (June 27, 2024): 13–30, <https://doi.org/10.59259/am.v3i1.161>; Difqa Alvi Ramadhandiko et al., "Legal Certainty of Property Rights Certificates as the Basis for the Execution of the Auction of Dependent Rights in Inheritance Disputes (Case Study of Supreme Court Decision No. 2911 K/Pdt/2019)," *Journal of Scientific Scholars* 5, no. 1 (2025).

also empirical through court decisions as a reflection of living law practice.¹⁹

Juridically, the legitimacy of the distribution of inheritances based on agreement can be traced in Article 183 of the Compilation of Islamic Law (KHI), which explicitly opens up space for the heirs to make peace in the distribution of inheritance after each knows his share. This norm shows that Indonesia's positive law does not position faraidh as the only distribution mechanism, but provides flexibility as long as the agreement is based on the awareness and willingness of the parties. This provision is in line with the general principle in civil procedure law that prioritizes peace as an ideal form of dispute resolution, and is strengthened by mediation regulations in the court as stipulated in the Supreme Court Regulation (PERMA) on mediation procedures.²⁰

From the perspective of Islamic law, the concept of ash-shulh has a strong foundation, both normative and historical. The jurists of various sects recognize that peace is a valid instrument in resolving muamalah disputes, including in the case of inheritance, as long as it does not legalize what is haram or prohibits what is halal. Thus, inheritance distribution agreements can be seen as a manifestation of the principles

¹⁹ Wani Wani, Sukiati Sukiati, and Muhammad Yadi Harahap, "Legal Jurisprudence for the Determination of the Distribution of Substitute Heirs (Study of Decision No. 128/Pdt.P/2024/Pa.Sry)," *Innovative: Journal Of Social Science Research* 5, no. 4 (July 1, 2025): 11–30, <https://doi.org/10.31004/innovative.v5i4.20071>; Christopher Hartono and Andrew Wijaya, "Juridical Review of Siri' and Pesse as a Moral Principle in Dispute Resolution of Bugis Adat Heirs," *Journal of Law, Humanities and Politics* 6, no. 2 (December 20, 2025): 1101–10, <https://doi.org/10.38035/jihhp.v6i2.6774>; Anak Agung Mas Adi Trinaya Dewi and I Made Wahyu Antara, "Efforts to Resolve the Dispute of the Transfer of Inheritance Rights of a Temple Owner through Paruman in Banjar Adat Merta Buana, Padangsembian Village," *Proceedings Series on Social Sciences & Humanities* 27 (2025).

²⁰ Mediation as et al., "Mediation as an Alternative to Settlement of Inheritance Disputes to Minimize the Accumulation of Disputes in Religious Courts," *Ejurnal.Kampusakademik.Co.Id* 2, no. 1 (2025); Rezi Alfarizi Rahman and Atik Winanti, "Legal Protection for Land Rights Buyers in the Siraso-Raso North Sumatra Heritage Dispute," *JURNAL USM LAW REVIEW* 8, no. 1 (January 27, 2025): 47–64, <https://doi.org/10.26623/julr.v8i1.9473>; Febri Damayanti et al., "Dispute Settlement of Manggarai Customary Law Inheritance Disputes (Study of Ruteng State Court Decision Number 1130 K/Pdt/2017)," *Karimah Tauhid* 4, no. 6 (June 16, 2025): 3414–19, <https://doi.org/10.30997/karimahtauhid.v4i6.18154>; Muhamad Habib et al., "Mediation of Inheritance Disputes in the Perspective of Islamic Law: A Case Study of the Medan District Court No. 703/Pdt.G/2024," *Journal of Innovative and Creativity (Joecy)* 5, no. 2 (July 7, 2025): 11547–51, <https://doi.org/10.31004/joecy.v5i2.1890>.

of benefit (masalah) and substantive justice, which in many cases reflect the social conditions and real needs of the heirs as opposed to rigid divisions based on mathematical formulas.²¹

However, an analysis of a number of religious court rulings shows that the implementation of an agreement in the distribution of inheritance does not always work within the ideal framework as assumed in theory. In some rulings, the panel of judges accepts and ratifies the agreement of the parties without conducting an in-depth examination of the process of forming the agreement. This raises serious issues related to the substantive validity of the agreement, especially in the context of potential pressures, power imbalances, or even manipulation of information among heirs.²²

As an illustration, in a number of inheritance cases involving female heirs, there was a tendency to receive a smaller share than they should have received according to the faraidh. In many cases, this is wrapped up in a narrative of "family agreement" that is considered a form of harmony and maintaining family relationships. However, if examined further, these agreements are often not entirely born of free will, but are

²¹ Cecareno Gilbrani Anwar and Mega Dewi Ambarwati, "The Urgency of the Existence of Mujtahid in the Dispute of Inheritance (Islamic Inheritance Case in Decision Number 596/PDT. G/2023/PA. SKA)," *Tasfiah : Journal of Islamic Law and Sharia Economics* 1, no. 1 (June 8, 2025): 1–15, <https://doi.org/10.69836/tasfiah.v1i1.322>; Nurul Iman, "The Role of Village Officials in Resolving Inheritance Disputes: A Case Study of Potoan Daja Palengaan Pamekasan Village," *Journal of Sharia and Law* 02, no. 01 (2025); Ayu Lestari, "The Role of Mediation in the Settlement of Muslim Family Inheritance Disputes: Qualitative Analysis on Practice in the Religious Justice Environment," *Co-Value Journal of Cooperative and Entrepreneurship Economics* 15, no. 12 (October 29, 2025), <https://doi.org/10.59188/dtwghd61>.

²² May Riski Anita Rahayu et al., "Disputes over the Inheritance Rights of Customary Land in the Patrilineal System in Rote Ndao (Supreme Court Decision No. 1048 K/Pdt/2012)," *Karimah Tauhid* 4, no. 6 (June 16, 2025): 3748–55, <https://doi.org/10.30997/karimahtauhid.v4i6.18140>; Vincent Vincent et al., "Procedures for Resolving Inheritance Disputes in the Civil, Islamic, and Customary Law Systems in Indonesia," *Journal of Law and Human Rights Wara Sains* 4, no. 03 (October 31, 2025): 578–87, <https://doi.org/10.58812/jhhws.v4i03.2892>; Maulana Fahrul Hidayat, Joko Sriwidodo, and St Laksanto Utomo, "Legal Settlement of Disputes over the Inheritance Rights of Interfaith Children According to the Perspective of Islamic Law," *Journal of Law and Security Studies* 2, no. 1 (June 30, 2025): 80–105, <https://doi.org/10.31599/cva2yj70>; Sinta Trijanatun Kasanah, Gilang Octa Pasca Testa, and Lucky Dafira Nugroho, "The Role of International Civil Law in Settlement of Inheritance Disputes Between States: A Case Study of Indonesian Citizens and Foreigners," *Al-Zayn : Journal of Social & Legal Sciences* 3, no. 3 (2025).

influenced by patriarchal social norms that place women in subordinate positions.²³ In this context, ash-shulh has the potential to be an instrument of legitimacy for structural injustice, rather than as a means of achieving substantive justice.

Furthermore, empirical data from the Supreme Court's annual report shows that the success rate of mediation in religious courts is in the range of 20–30% in Islamic civil cases, including inheritance. While this figure indicates the relative effectiveness of mediation mechanisms, there is no guarantee that all agreements will truly reflect fairness for all parties. The absence of an evaluation mechanism for the quality of agreements is a significant gap in current judicial practice.²⁴

From the perspective of justice theory, this condition can be analyzed using procedural justice and substantive justice approaches. Agreements reached through mediation or family deliberation may meet the procedural justice aspect, as the parties are involved in the decision-

²³ Annisa A, Ma'ruf Akib, and Wahyudi Umar, "The Urgency of Using Mediation Mechanisms as an Alternative in Resolving Inheritance Disputes Due to Divorce in the Community," *UNES Law Review* 7, no. 4 (2025); Sulthon Miladiyanto, Ibnu Subarkah, and Ayu Asti Firnanda, "EFFORTS TO PREVENT AND RESOLVE INHERITANCE DISPUTES: BUILDING LEGAL AWARENESS FOR A HARMONIOUS FAMILY," *JOURNAL OF APPLICATION AND INNOVATION OF SCIENCE AND TECHNOLOGY "SOLIDITAS" (J-SOLID)* 8, no. 2 (October 31, 2025): 56–63, <https://doi.org/10.31328/js.v8i2.7342>; Brighitta Priscilla MSS, Benny Djadja, and Maman Sudirman, "Settlement of Disputes over Inheritance Rights to Customary Land in the Perspective of Agrarian Law," *Journal of Constitutional, Law and Human Rights* 2 (2025); Sri Rizka Novi Anggraeni Mursid et al., "Analysis of Settlement of Inheritance Rights Disputes in a Positive Legal Perspective: A Case Study of Decision Number: 396/K/PDT/2019," *Karimah Tauhid* 4, no. 6 (June 16, 2025): 3426–36, <https://doi.org/10.30997/karimahtauhid.v4i6.18142>.

²⁴ Agus Wedy, "Reflections of Sharia Maqashid in Digital Inheritance Dispute Resolution: Answering the Challenges of Islamic Family Law in the Age of Technology," *Litaskunu : Islamic Family Law Journal* 1, no. 1 May (2025); M Hamzah Iqballudin, Fatkhanah, and Syafik Muhammad, "Harmonization of Islamic Inheritance Law and Customary Inheritance Law in the Settlement of Inheritance Disputes in Indonesia," *JICN: Journal of Intellectual and Scholars of Nusantara* 2, no. 3 (2025); Baiti Akisha and Mukhtar Ibrahim, "THE EFFECTIVENESS OF THE MEDIATION PROCESS IN RESOLVING INHERITANCE DISPUTES IN BALE MEDIASI NUSA TENGGARA BARAT (NTB)," *Al-IHKAM Journal of Family Law, Department of Ahwal Al-Syakshiyah, Faculty of Sharia, IAIN Mataram* 17, no. 1 (July 24, 2025): 61–82, <https://doi.org/10.20414/alihkam.v17i1.10956>; Sinta Trijanatun Kasanah, Gilang Octa Post Testa A, and Lucky Dafira Nugroho, "The Role of International Civil Law in the Settlement of Interstate Inheritance Disputes: A Case Study of Indonesian Citizens and Foreigners," *Al-Zayn : Journal of Social & Legal Sciences* 3, no. 3 (June 16, 2025): 1448–58, <https://doi.org/10.61104/alz.v3i3.1385>.

making process. However, without guarantees of equality of position and access to information, the final outcome of the agreement does not necessarily meet substantive justice standards.²⁵ Therefore, it is important for judges to not only play the role of a formal facilitator, but also as a guardian of justice ensuring that the proposed agreement truly reflects free will and does not harm a particular party.

In this context, the role of judges becomes very crucial. Progressive court rulings show an attempt not to necessarily accept the parties' agreement, but to verify the background and implications of the agreement. Judges in some cases even ask for additional clarification or postpone the ratification of the agreement if there are indications of an imbalance. This kind of practice reflects a more responsive approach to the values of substantive justice and is in line with the principles of *maqashid al-shariah*, especially in safeguarding property (*hifz al-mal*) and individual dignity.²⁶

On the other hand, there are also rulings that show a more formalistic approach, where the agreement of the parties is considered a form of autonomy that does not need to be tested further. This approach risks ignoring the social and psychological dimensions that affect the decision-making process in the family. In the context of Indonesian society that is still steeped in collectivism, social and cultural pressures

²⁵ Layloh Maghfiroh et al., "Settlement of Inheritance Disputes Due to Written Wills Granting Heirs Rights to Other Heirs," *Journal of Contemporary Law Studies* 2 (2024); Maria Kaban, "SETTLEMENT OF CUSTOMARY LAND INHERITANCE DISPUTES IN KARO INDIGENOUS PEOPLE," *Law Pulpit - Faculty of Law, Gadjah Mada University* 28, no. 3 (October 15, 2016): 453, <https://doi.org/10.22146/jmh.16691>; Maulani Al Umi Juri Yusirwan et al., "ANALYSIS OF THE ROLE OF ADVOCATES IN THE SETTLEMENT OF INHERITANCE DISPUTES IN THE RELIGIOUS JUSTICE ENVIRONMENT," *Journal of Indonesian Comparative of Shari'ah Law* 8, no. 1 (April 1, 2025): 187–98, <https://doi.org/10.21111/jicl.v8i1.13637>.

²⁶ Anggi Asyera Aritonang, "Analysis of Inheritance Disputes in Civil Case No. 703/Pdt.G/2024/PN Mdn: A Study on the Determination of Heirs and Settlement through Mediation," *Journal of Law, Humanities and Politics* 5, no. 3 (January 30, 2025): 1730–37, <https://doi.org/10.38035/jihhp.v5i3.3890>; Petty Aulia Mandasari, Djanuardi, and Renny Supriyatni, "SETTLEMENT OF INHERITANCE DISTRIBUTION DISPUTES TO THE DZAWIL ARHAM GROUP THROUGH LITIGATION AND NON-LITIGATION IN THE PERSPECTIVE OF THE ISLAMIC INHERITANCE SYSTEM," *ACTA DIURNAL Journal of Notary Law* 6, no. 1 (2022); Misbahun Nury, "THE ROLE OF KYAI AS A MEDIATOR IN RESOLVING INHERITANCE DISPUTES IN MADURA," *ADHKI: JOURNAL OF ISLAMIC FAMILY LAW* 4, no. 1 (July 24, 2023): 25–34, <https://doi.org/10.37876/adhki.v4i1.92>.

often play a significant role in shaping seemingly voluntary "agreements" on the surface.²⁷

Thus, it can be concluded that the practice of agreement-based inheritance distribution in religious courts is a complex and ambivalent phenomenon. On the one hand, this mechanism provides flexibility and space for the parties to reach a solution that is considered most appropriate to their conditions. On the other hand, without adequate oversight and evaluation, the agreement has the potential to become a means of reproducing injustice, especially for vulnerable groups.²⁸

Therefore, it is necessary to strengthen the role of judges in overseeing the agreement process, including through the development of more detailed guidelines related to the parameters of justice in *ash-shulh*. In addition, increasing the capacity of mediators in understanding social dynamics and power relations in the family is also an important step to ensure that mediation is not only a formal procedure, but truly functions as an instrument of justice. In the long run, the integration between Islamic legal norms, positive law, and social realities is key in building an inheritance system that is not only legally valid, but also substantively just.

Judicial Interpretation of Justice in Inheritance Cases

Justice in the case of Islamic heritage cannot be separated from the dialectic between textual norms derived from the law of *faraidh* and judicial practices that develop in the religious justice environment.

²⁷ Aritonang, "Analysis of Inheritance Disputes in Civil Case No. 703/Pdt.G/2024/PN Mdn: A Study on the Determination of Heirs and Settlement through Mediation"; Mandasari, Djanuardi, and Supriyatni, "SETTLEMENT OF INHERITANCE DISTRIBUTION DISPUTES TO THE DZAWIL ARHAM GROUP THROUGH LITIGATION AND NON-LITIGATION IN THE PERSPECTIVE OF THE ISLAMIC INHERITANCE SYSTEM"; Nury, "THE ROLE OF KYAI AS A MEDIATOR IN RESOLVING INHERITANCE DISPUTES IN MADURA"; Charisse Evania Tansir et al., "Disputes over the distribution of inheritance based on civil law in Indonesia," *Journal of Accounting Law Communication and Technology* 2, no. 1 (December 29, 2024): 366–73, <https://doi.org/10.57235/jalakotek.v2i1.4562>; Argya Attallah Apriyano et al., "Settlement of Inheritance Disputes in Conflicts Between Blood Families," *Journal of Citizenship* 8, no. 1 (2024); Tri Setiady and Yulia Putri Maulina, "The Binding Power of Mediation Law as an Effort to Resolve Inheritance Disputes Reviewed Based on Law No. 30 of 1999 concerning Arbitration and ADR," *Darma Agung Journal* Volume 32, No. 4 (2024).

²⁸ Fu'ad, Asep, Aden Rosadi, Usep Saepullah, and Husain, trans. 2024. "Politik Hukum Pengaturan Ahli Waris Pengganti Dalam Pasal 185 Kompilasi Hukum Islam: Analisis Normatif Dan Implikasinya Terhadap Sistem Kewarisan Di Indonesia". *Al-Battar: Jurnal Pamungkas Hukum* 1 (3): 127-38. <https://doi.org/10.63142/e3fj4d24>.

Normatively, the division of inheritance in Islam has been regulated in detail through the principles of faraidh sourced from the Qur'an and hadith, which are then codified in the Compilation of Islamic Law (KHI). However, judicial practice shows that judges do not always apply these provisions rigidly, but rather carry out contextual interpretations to achieve substantive justice.²⁹ This is evident in various decisions at the level of the Religious Court, the High Court of Religion, and the Supreme Court.

In the context of this study, an analysis of Decision Number 251/Pdt.G/2014/PA. JB and Decision Number 33/Pdt.G/2015/PTA. JK shows that there is a dynamic interpretation of justice that does not solely rely on mathematical division as determined in faraidh. The West Jakarta Religious Court in its decision showed a tendency to accommodate the agreement of the heirs as the basis for the distribution of inheritance. This approach reflects the application of the principle of deliberation which in the perspective of Islamic law has strong legitimacy, as long as it does not contradict the basic principles of sharia. Judges in this case not only function as a mouthpiece of the law, but also as mediators of the values of social justice that live in society.

Empirically, the practice of accepting the agreement of the heirs in inheritance matters is not an isolated phenomenon. Data from the Directorate General of the Religious Justice Agency shows that in the period 2010–2020, around 35-40% of inheritance cases resolved at the first level involved elements of peace or agreement between the parties. This fact indicates that a flexible approach to inheritance distribution has high social relevance, especially in societies that uphold family values and social harmony. Thus, the West Jakarta PA Decision cannot be seen as a deviation, but rather as a representation of judicial practice that is responsive to the needs of the community.

At the appeal level, the Decision of the Jakarta High Court of Religion Number 33/Pdt.G/2015/PTA. JK provides an additional dimension in understanding the construction of justice. PTA Jakarta in the decision did not necessarily reject the consideration of the Religious Court, but evaluated the basics of legal considerations used. In several aspects, the PTA strengthens the first-instance judgment, especially regarding the legitimacy of the heirs' agreement. However, at the same

²⁹ Akhmad Sukris Sarmadi, "Inheritance Disputes in the Family: A Literature Analysis of Causes and Their Resolution in a Civil Law Perspective," *Indonesian Research Journal on Education* 4, no. 1 (May 27, 2024), <https://doi.org/10.31004/irje.v4i1.594>.

time, the PTA also emphasized the importance of maintaining a normative corridor so that the agreement does not violate the basic principles of Islamic inheritance law.

This approach suggests a balance between procedural justice and substantive justice. Procedural justice is reflected in compliance with applicable legal rules, while substantive justice is realized through consideration of the concrete conditions of the parties. In contemporary Islamic legal literature, this kind of approach is often associated with the concept of *maqāṣid al-shari'ah*, which is the purpose of sharia that emphasizes the protection of five fundamental aspects: religion, soul, intellect, heredity, and property. In the context of inheritance, the protection of property is not only interpreted as a distribution that is in accordance with the text, but also as a distribution that guarantees the benefit of the heirs.³⁰

Furthermore, the role of the Supreme Court as a court of cassation is crucial in ensuring the consistency of legal interpretation as well as providing direction for the development of national law. In a number of cassation decisions related to inheritance cases, the Supreme Court has tended to emphasize the importance of a balance between legal certainty and a sense of justice. Legal certainty is realized through the application of clear and consistent norms, while a sense of justice is realized through flexibility in interpreting these norms according to the social context.³¹

³⁰ Riana Kesuma Ayu, "The Position of Inheritance Distribution for Khuntsa Heirs in the Perspective of Technological Advancement," *Lambung Mangkurat Law Journal* 5, no. 2 (September 30, 2020), <https://doi.org/10.32801/lamlaj.v5i2.183>; Panji Prapdayuda Setiawan, "The Position of Agreements Among Heirs on the Distribution of Inheritance (Study of Supreme Court Decision Number 127 K/Ag/2012)," *Journal of Law of Deli Sumatra: Legal Scientific Journal* 1, no. 1 (2021); Ilham Habibi Kusuma and Zulkifli Zulkifli, "WARISAN SAMA RATA (CASE STUDY OF BUMI MULYA VILLAGE, LOGAS TANAH DARAT DISTRICT, KUANTAN SINGINGI REGENCY, RIAU PROVINCE)," *JISRAH: Journal of Sharia Science Integration* 4, no. 1 (April 30, 2023): 175, <https://doi.org/10.31958/jisrah.v4i1.10315>.

³¹ Y Solver, K Sudiarmaka, and ..., "Juridical Review of the Inheritance of Adopted Children of Batak Toba Traditional Women Based on Supreme Court Decision Number 179/K/SIP/1961," ... *Gender and Rights*..., 2023; Tarmizi Tarmizi, Supardin Supardin, and Kurniati Kurniati, "Rules for the Distribution of Community Heritage in Tellu Siattinge District, Bone Regency in the View of Islamic Law," *Al-Qadau Journal: Islamic Family Justice and Law* 7, no. 2 (December 24, 2020): 12–29, <https://doi.org/10.24252/al-qadau.v7i2.15330>; El Sobirin Hasibuan, Abdur Rokhim Hasan, and Kholilurrohman Kholilurrohman, "Hibah in Tafsir Ahkam (Study of Hibah Verses in the Qur'an)," *Global Journal of Scientific* 2, no. 12 (September 23, 2025): 1164–72, <https://doi.org/10.55324/jgi.v2i12.281>.

As an illustration, in several cassation decisions, the Supreme Court emphasized that the agreement of the heirs can be used as the basis for the distribution of assets as long as it is done voluntarily and does not harm certain parties. This approach is in line with the principle of "al-sulh sayyid al-aḥkām" (peace is the culmination of all decisions), which in the Islamic legal tradition is seen as the most ideal dispute settlement mechanism. Thus, the Supreme Court not only plays a role as a guardian of norms, but also as a facilitator of adaptive justice.³²

From a comparative perspective, there is a difference in emphasis between one level of justice and another. Religious Courts tend to be closer to the social realities of the parties, so they are more open to contextual approaches. The High Court of Religion serves as a filter that ensures that the approach remains within the correct legal corridor. Meanwhile, the Supreme Court plays a role as a direction setter that gives legitimacy to practices that are considered in accordance with the principles of justice within the national legal framework.³³

This difference is not a form of inconsistency, but a reflection of the tiered justice system that allows corrections and improvements in the law enforcement process. In this context, justice is not understood as a static concept, but as a dynamic construct that continues to evolve through the interaction between norms and practices. This is in line with the view of progressive legal experts who emphasize that law must be able to adapt to social changes without losing its normative integrity.³⁴

³² Solver, Sudiarmaka, and ..., "Juridical Review of the Inheritance of Adopted Children of Batak Toba Traditional Women Based on Supreme Court Decision Number 179/K/SIP/1961"; Tarmizi, Supardin, and Kurniati, "Rules for the Distribution of Community Heritage in Tellu Siattinge District, Bone Regency in the View of Islamic Law"; Hasibuan, Hasan, and Kholilurrohman, "Hibah in Tafsir Ahkam (Study of Grant Verses in the Qur'an)"; Rosikhul Islam et al., "Distribution of Inheritance According to Sharia Law and Deliberation in Sepande Village, Candi District, Sidoarjo Regency," *Mu'allim Journal* 5, no. 1 (February 14, 2023): 210–19, <https://doi.org/10.35891/muallim.v5i1.3347>.

³³ Setiawan, "The Position of Agreements Among Heirs on the Distribution of Inheritance (Study of Supreme Court Decision Number 127 K/AG/2012)"; Kesuma Ayu, "The Position of Inheritance Distribution for Khuntsa Heirs in the Perspective of Technological Advancement."

³⁴ Muhammad Hari Sudarmawan and Masrokhin, "EQUAL DISTRIBUTION OF INHERITANCE BETWEEN BOYS AND GIRLS," *USRAH: Journal of Islamic Family Law* 4, no. 2 (October 21, 2023): 219–29, <https://doi.org/10.46773/usrah.v4i2.815>; Fitrah Nisardi, Supardin Supardin, and Andi Muhammad Akmal, "THE APPLICATION OF THE RULES OF FIQH AL-ADAH MUHAKKAMAH IN THE DISTRIBUTION OF INHERITANCE IN THE ISLAMIC

Thus, the main strength of this research lies in its ability to uncover how the concept of justice is interpreted differently by each level of justice. Without this kind of comparative analysis, the discussion of inheritance will tend to be trapped in a normative approach that does not make a significant contribution to the development of legal science. On the contrary, by critically examining judicial practice, this study was able to show that justice in Islamic inheritance law is determined not only by the text, but also by the context and interpretation made by the judge.

Finally, it can be concluded that the interpretation of justice in inheritance cases in Indonesia shows a shift from a legalistic approach to a more substantive and contextual approach. This shift does not mean ignoring the *fariath* norms, but rather enriching its application by taking into account the social realities faced by the heirs. Within this framework, the role of judges becomes very strategic as an actor who bridges the gap between text and context, between legal certainty and social justice.

Balancing Legal Certainty and Substantive Justice

In the practice of Islamic inheritance law in Indonesia, the tension between legal certainty and substantive justice is a phenomenon that is not only conceptual, but also manifest in various religious court decisions. This tension arises because on the one hand inheritance law has been codified relatively rigidly in the Compilation of Islamic Law (KHI), while on the other hand the social realities faced by the parties often demand flexibility in the application of norms.³⁵

Theoretically, the concept of justice in Islamic law cannot be reduced solely to mathematical similarities in the distribution of inheritance. Justice in the distributive sense requires consideration of the concrete conditions of the heirs, including economic, social, and family relations aspects. In this context, the distribution of inheritances that appears textually fair does not necessarily produce true justice if it does not pay attention to the real situation faced by the parties. For example,

COMMUNITY IN TANETE RIATTANG DISTRICT, BONE REGENCY," *Qadauna: Scientific Journal of Islamic Family Law Students* 4, no. 2 (2023), <https://doi.org/10.24252/qadauna.v4i2.36513>.

³⁵ Maghfiroh et al., "Settlement of Heirs Disputes Due to Written Wills Granting Heirs Rights to Other Heirs"; Sinta Trijanatun Kasanah, Gilang Octa Post Testa A, and Lucky Dafira Nugroho, "The Role of International Civil Law in the Settlement of Inheritance Disputes Between States: A Case Study of Indonesian Citizens and Foreigners"; Kaban, "SETTLEMENT OF CUSTOMARY LAND INHERITANCE DISPUTES AMONG THE KARO INDIGENOUS PEOPLE."

the division that follows the 2:1 formula between men and women as set forth in the Qur'an can be understood as a form of proportional justice that takes into account men's economic responsibilities in the classical family structure. However, in a modern society where women also play the role of the main breadwinner, the rigid application of the formula has the potential to create substantive injustices.³⁶

Empirical data from several religious court rulings in Indonesia show that there is a tendency for judges to not only stick to normative texts, but also consider aspects of substantive justice. Research conducted by the Supreme Court's Research and Development and Training Agency in the 2018–2022 period showed that around 37% of disputed inheritance decisions contained non-doctrinal considerations, such as the heirs' economic contribution to the heirs or the special needs of one of the parties. This indicates that judges are not entirely bound by a positivistic approach, but rather adopt a sociological approach in interpreting the law.³⁷

This approach is in line with the theory of distributive justice put forward by modern legal philosophers, which emphasizes the importance of distributing resources based on needs and contributions. From the perspective of Islamic law, this approach has a strong foundation in the concept of *maqasid sharia*, which is the goals of Islamic law that are oriented towards benefit. In the context of inheritance, *maqasid sharia* requires that the distribution of assets not only meets the legal-formal

³⁶ Nisardi, Supardin, and Akmal, "THE APPLICATION OF FIQH RULES AL-ADAH MUHAKKAMAH IN THE DISTRIBUTION OF INHERITANCE IN THE ISLAMIC COMMUNITY IN TANETE RIATTANG DISTRICT, BONE REGENCY"; Sudarmawan and Masrokhin, "EQUAL DISTRIBUTION OF INHERITANCE BETWEEN BOYS AND GIRLS"; Islam et al., "Distribution of Inheritance According to Sharia Law and Deliberation in Sepande Village, Candi District, Sidoarjo Regency"; Hasibuan, Hasan, and Kholilurrohman, "Hibah in Tafsir Ahkam (Study of Hibah Verses in the Qur'an)."

³⁷ Nisardi, Supardin, and Akmal, "THE APPLICATION OF FIQH RULES AL-ADAH MUHAKKAMAH IN THE DISTRIBUTION OF INHERITANCE IN THE ISLAMIC COMMUNITY IN TANETE RIATTANG DISTRICT, BONE REGENCY"; Sudarmawan and Masrokhin, "EQUAL DISTRIBUTION OF INHERITANCE BETWEEN BOYS AND GIRLS"; Islam et al., "Distribution of Inheritance According to Sharia Law and Deliberation in Sepande Village, Candi District, Sidoarjo Regency"; Hasibuan, Hasan, and Kholilurrohman, "Hibah in Tafsir Ahkam (Study of Grant Verses in the Qur'an)"; Tarmizi, Supardin, and Kurniati, "Rules for the Distribution of Community Heritage in Tellu Siattinge District, Bone Regency in the View of Islamic Law."

aspects, but is also able to maintain family harmony, prevent conflicts, and ensure the sustainability of the welfare of the heirs.³⁸

The principle of maintaining justice between heirs is one of the manifestations of maqasid sharia in the field of muamalah. When inheritance distribution is carried out without considering actual conditions, the potential for family conflict becomes very large. Data from the Directorate General of the Religious Justice Agency shows that inheritance cases are among the top five cases that most often cause prolonged conflicts in religious courts, with relatively high appeals and cassation rates compared to other cases.³⁹ This shows that aspects of substantive justice are often not fully accommodated in first-instance decisions, thus triggering dissatisfaction among the parties.

In addition, maqasid sharia also emphasizes the importance of avoiding harm. In the context of inheritance, harm can be in the form of marginalization of one of the heirs, especially women or children who are economically weak. Therefore, judges have *ijtihad* room to make adjustments to existing norms, as long as they do not conflict with basic sharia principles. These adjustments can be in the form of recognition of grants during life, mandatory wills, or even reinterpretation of inheritances in certain situations.⁴⁰

³⁸ Hasibuan, Hasan, and Kholilurrohman, "Hibah in Tafsir Ahkam (Study of Grant Verses in the Qur'an)"; Tarmizi, Supardin, and Kurniati, "Rules for the Distribution of Community Heritage in Tellu Siattinge District, Bone Regency in the View of Islamic Law"; Solver, Sudiarmaka, and ..., "Juridical Review of the Inheritance of Adopted Children of Batak Toba Traditional Women Based on Supreme Court Decision Number 179/K/SIP/1961"; Kusuma and Zulkifli, "WARISAN SAMA RATA (A CASE STUDY OF BUMI MULYA VILLAGE, LOGAS TANAH DARAT DISTRICT, KUANTAN SINGINGI REGENCY, RIAU PROVINCE)."

³⁹ Setiawan, "The Position of Agreements Among Heirs on the Distribution of Inheritance (Study of Supreme Court Decision Number 127 K/AG/2012)"; Kesuma Ayu, "The Position of Inheritance Distribution for Khuntsa Heirs in the Perspective of Technological Advancement"; Ms. Hasan Bisri, *A Compilation of Islamic Law and Religious Justice in the National Legal System*.

⁴⁰ Aritonang, "Analysis of Inheritance Disputes in Civil Case No. 703/Pdt.G/2024/PN Mdn: A Study on the Determination of Heirs and Settlement through Mediation"; Tansir et al., "Disputes over the Division of Inheritance Based on Civil Law in Indonesia"; Nury, "THE ROLE OF KYAI AS A MEDIATOR IN RESOLVING INHERITANCE DISPUTES IN MADURA"; Sintia Trijanatun Kasanah, Gilang Octa Post Testa A, and Lucky Dafira Nugroho, "The Role of International Civil Law in the Settlement of Inheritance Disputes Between States: A Case Study of Indonesian Citizens and Foreigners."

The role of judges in making these adjustments can be understood through a legal perspective as a tool of social engineering as stated by Roscoe Pound. In this framework, law is not seen as a static system, but rather as an instrument that can be used to direct social change. Court decisions, especially in inheritance cases, have a strategic function in bridging the gap between general legal norms and specific social realities.⁴¹

In practice, judges are often faced with a dilemma between maintaining legal certainty and realizing substantive justice. Legal certainty demands consistency in the application of norms, so that every similar case should be decided in the same way. However, substantive justice requires flexibility to consider the uniqueness of each case. This dilemma cannot be solved with a dichotomous approach, but requires a synthesis that is able to integrate the two values.⁴²

One form of synthesis that can be observed is the use of contextual approaches in legal interpretation. The judge not only referred to the text of the KHI, but also considered the general principles of Islamic law as well as the values of justice that live in society. This approach allows for the creation of judgments that are not only legally valid, but also socially acceptable. In the long term, this practice can contribute to the formation of jurisprudence that is more responsive to the dynamics of society.⁴³

⁴¹ Wedy, "Reflections of Sharia Maqashid in Digital Inheritance Dispute Resolution: Answering the Challenges of Islamic Family Law in the Age of Technology"; Hamzah Iqballudin, Fatkhanah, and Muhammad, "Harmonization of Islamic Inheritance Law and Customary Inheritance Law in the Settlement of Inheritance Disputes in Indonesia"; Mursid et al., "Analysis of Settlement of Inheritance Rights Disputes in a Positive Legal Perspective: A Case Study of Decision Number: 396/K/PDT/2019."

⁴² Miladiyanto, Subarkah, and Firnanda, "EFFORTS TO PREVENT AND RESOLVE INHERITANCE DISPUTES: BUILDING LEGAL AWARENESS FOR A HARMONIOUS FAMILY"; A, Akib, and Umar, "The Urgency of Using Mediation Mechanisms as an Alternative in Resolving Inheritance Disputes Due to Divorce in the Community"; Kasanah, Testa, and Nugroho, "The Role of International Civil Law in the Settlement of Inheritance Disputes Between Countries: A Case Study of Indonesian Citizens and Foreigners"; Habib et al., "Mediation of Probate Disputes in the Perspective of Islamic Law: A Case Study of the Medan District Court No. 703/Pdt.G/2024."

⁴³ Habib et al., "Mediation of Inheritance Disputes in the Perspective of Islamic Law: A Case Study of the Medan District Court No. 703/Pdt.G/2024"; Damayanti et al., "Settlement of Disputes of Inheritance of Manggarai Customary Law (Study of the Decision of the Ruteng State Court Number 1130 K/Pdt/2017)"; Rahman and Winanti, "Legal Protection for Land Rights Buyers in the Siraso-Raso Heritage Dispute of North Sumatra."

Furthermore, the social engineering function of the law is also seen in the court's efforts to prioritize mediation in inheritance cases. Mediation provides space for the parties to reach a more flexible agreement that suits their needs. Supreme Court data shows that the success rate of mediation in inheritance cases has increased from 18% in 2016 to around 29% in 2023. Although this figure is still relatively low, the upward trend suggests a growing awareness of the importance of agreement-based dispute resolution.⁴⁴

Thus, it can be concluded that the balance between legal certainty and substantive justice in Islamic inheritance law is a dynamic and contextual process. Legal certainty is still needed as a foundation to maintain the stability of the legal system, but the need for more substantive justice must not be ignored. Through an integrative approach, which combines justice theory, sharia maqasid, and legal concepts as social engineering tools, judges can produce decisions that not only meet formal legal standards, but also reflect the values of justice that live in society.

In an academic perspective, these findings strengthen the argument that Islamic law has an intrinsic flexibility that allows adaptation to social change. This flexibility is not a form of deviation from sharia principles, but rather a manifestation of the main goal of sharia itself, which is to realize the benefits of humanity. Therefore, the future development of Islamic inheritance law needs to continue to encourage a more contextual and responsive approach, without neglecting the basic principles on which it is based.

CONCLUSION

The conclusion of this study confirms that the disparity in decisions in inheritance disputes between men and women in Decision Number 251/Pdt.G/2014/PA. JB and Number 33/Pdt.G/2015/PTA. JK shows that there are different juridical approaches in interpreting justice. The Panel of Judges at the first level and appeals tends to use a contextual

⁴⁴ Alvi Ramadhandiko et al., "Legal Certainty of Property Rights Certificates as the Basis for the Execution of the Auction of Dependent Rights in Inheritance Disputes (Case Study of Supreme Court Decision No. 2911 K/Pdt/2019)"; Wani, Sukiati, and Harahap, "Legal Jurisprudence on the Determination of the Distribution of Substitute Heirs (Study of Decision Number 128/Pdt.P/2024/Pa.Sry)"; Dewi and Antara, "Efforts to Resolve the Dispute of the Transfer of Inheritance Rights of a Temple Collector through Paruman in Banjar Adat Merta Buana, Padangsembian Village"; Nasrulloh and Witro, "EQUAL DISTRIBUTION OF INHERITANCE OF BOYS AND GIRLS FROM THE PERSPECTIVE OF ISLAMIC BENEFITS AND JUSTICE: An Analysis of Decision 3052/Pdt.G.2010/PA. "Poor Kab."

approach by taking into account the social facts and conditions of the parties, so that in practice it sets aside certain normative provisions in order to realize substantive justice. On the contrary, the Panel of Judges at the cassation level emphasized that justice must be based on legal certainty through the consistent application of the provisions of Islamic law (*faraidh*) and positive law. Thus, the research question regarding the basis of judges' considerations in deciding the distribution of inheritances was answered that there is a tension between substantive justice and legal certainty.

The findings of this study show that the absence of a standard standard or guideline for judges in balancing the norm of *faraidh* and social reality is the main factor in the disparity in verdicts. On the one hand, the flexibility of judges opens up space for the achievement of contextual justice, but on the other hand, it has the potential to cause inconsistency and legal uncertainty. The contribution of this research lies in strengthening the argument that the integration between normative and contextual approaches is indispensable in Islamic inheritance law in Indonesia, especially in the practice of religious justice. In addition, this study also enriches legal studies by presenting a comparative analysis of court decisions as a basis for evaluating the practice of inheritance law enforcement.

Based on these findings, this study recommends the need for the preparation of comprehensive judicial guidelines for judges in handling inheritance cases, especially related to the harmonization between the principle of *faraidh* and the agreement of the parties in the distribution of inheritance. This guideline is expected to be able to be a reference in balancing aspects of justice, utility, and legal certainty proportionately. In addition, efforts are needed to harmonize regulations and strengthen the capacity of judges in understanding the social dynamics of society so that the resulting decisions are not only normatively consistent, but also responsive to the sense of justice that lives in society.

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