



Contextualizing Islamic Inheritance Law in Indonesia: Addressing Negative Stigma

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Asbtrak

Hukum waris Islam distigmatisasi karena dianggap kaku dan konservatif. Kekakuan dan konservatisme warisan Islam dapat dilihat dalam pandangan bahwa aturan waris Islam tidak dapat diubah atau dimodifikasi. Selain itu, ada anggapan bahwa aturan waris Islam tidak memperhatikan perkembangan sosial yang terjadi dari waktu ke waktu. Penelitian ini bertujuan untuk mengkaji bagaimana penerapan hukum waris Islam di Indonesia dan bagaimana kontekstualisasi dilakukan dalam merespon stigma yang ada. Penelitian ini merupakan jenis penelitian kualitatif dengan pendekatan yuridis normatif. Data penelitian bersifat sekunder yang bersumber dari dokumen dan teks tentang hukum waris Islam dan kasus-kasus konkret tentang kontekstualisasi hukum waris Islam di Indonesia dalam situasi dan konteks yang berbeda. Data dianalisis menggunakan teknik interpretatif deskriptif dengan menggunakan hermeneutika tauhid Amina Wadud. Hasil penelitian menunjukkan bahwa hukum waris Islam di Indonesia telah mengalami kontekstualisasi sehingga stigma negatif yang melekat pada waris Islam dapat dinegasikan. Kontekstualisasi dilakukan dengan memahami dan memperjuangkan hukum waris Islam dalam konteks Indonesia, merekonstruksi konsep dasar hukum waris Islam sesuai dengan konteks Indonesia, serta mendorong penyelesaian konflik waris melalui musyawarah dan mediasi. Penelitian ini menawarkan model pembagian warisan yang diterapkan di Indonesia yang kontekstual dan fleksibel berdasarkan hermeneutika tauhid Amina Wadud.

Kata Kunci: Kontekstualisasi, Kewarisan Islam, Hermeneutika Tauhid, Stigma.

Abstract

Islamic inheritance law is stigmatized because it is considered rigid and conservative. The rigidity and conservatism of Islamic inheritance can be seen in the view that Islamic inheritance rules cannot be changed or modified. Moreover, there is an assumption that Islamic inheritance rules do not pay attention to social developments that occur over time. This study aims to examine how the application of Islamic inheritance law in Indonesia and how contextualization is done in response to the existing stigma. This research is a type of qualitative research with a normative juridical approach. The research data is secondary in nature sourced from documents and texts on Islamic inheritance law and concrete cases on the contextualization of Islamic inheritance law in Indonesia in different situations and contexts. The data is analyzed using descriptive interpretative

techniques using Amina Wadud's hermeneutics of tawhid. The results show that Islamic inheritance law in Indonesia has undergone contextualization so that the negative stigma attached to Islamic inheritance can be negated. Contextualization is done by understanding and fighting for Islamic inheritance law in the Indonesian context, reconstructing the basic concepts of Islamic inheritance law in accordance with the Indonesian context, and encouraging to resolve inheritance conflicts through deliberation and mediation. This research offers a model of inheritance distribution applied in Indonesia which is contextual and flexible based on Wadud's Hermeneutics of tawhid.

Keywords: Contextualization, Indonesia, Islamic inheritance, hermeneutics of tawhid, Stigma.

Introduction

Islamic inheritance law is considered to have rigid and conservative rules¹. An example of Islamic inheritance law that is considered rigid is for parents who have two sons and one daughter, their property will be divided into three parts with two parts received by the son and one part received by the daughter. This rule is part of Islamic inheritance law and cannot be changed or modified. This is because the rule is taken from the Qur'an and Hadith and is understood to be fair and equitable in the distribution of inheritance².

An example of Islamic inheritance law that is considered conservative is the distribution of inheritance can only be received by certain family members, such as children, husbands, wives, and parents. In some cases, the inheritance cannot be received by women as applies in the implementation of distribution in Lampung and Batak communities that adhere to patrilineal inheritance system.³ This model of inheritance is considered conservative because it views women as inferior and unworthy of receiving an equal share in the distribution of inheritance.⁴ This rule is also considered conservative because it does not take into account social developments and environmental changes that occur over time.⁵

For feminists, Islamic inheritance law is viewed differently. However, they generally view Islamic inheritance law as conservative and discriminatory towards women.⁶ In some interpretations, Islamic inheritance law restricts women's right to receive the same share in the division of property as men, which is considered discriminatory and unfair.⁷ Feminists also debate

¹ Anugrah Reskiani et al., "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (June 9, 2022): 40, doi:10.31958/juris.v21i1.5564.

² Muhammad Ali Murtadlo, "Keadilan Gender Dalam Hukum Pembagian Waris Islam Perspektif The Theory Of Limit Muhammad Syahrur," *Gender Equality: International Journal of Child and Gender Studies* 4, no. 1 (February 25, 2019): 175, doi:10.22373/equality.v4i1.4487.

³ Yapiter Marpi, "Eksistensi Pembagian Harta Waris Adat Lampung Pepadun Secara Sistem Patrilineal Pada Lampung Timur," *Res Judicata* 5, no. 1 (August 16, 2022): 59, doi:10.29406/rj.v5i1.4309; Jaja Ahmad Jayus, "Eksistensi Pewarisan Hukum Adat Batak," *Jurnal Yudisial* 12, no. 2 (September 24, 2019): 235, doi:10.29123/jy.v12i2.384.

⁴ Maro Youssef, "Strategic Choices: How Conservative Women Activists Remained Active throughout Tunisia's Democratic Transition," *Sociological Forum* 37, no. 3 (2022): 836–55, doi:10.1111/socf.12828.

⁵ Wahidah Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 31, 2022): 1054, doi:10.22373/sjhk.v6i2.12466.

⁶ Nina Nurmila, "The Spread of Muslim Feminist Ideas in Indonesia: Before and After the Digital Era," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 1 (June 11, 2021): 97–126, doi:10.14421/ajis.2021.591.97-126; Sari Hanafi and Azzam Tomeh, "Gender Equality in the Inheritance Debate in Tunisia and the Formation of Non-Authoritarian Reasoning," *Journal of Islamic Ethics* 3, no. 1–2 (December 27, 2019): 207–32, doi:10.1163/24685542-12340026; Nur Hidayah, "Islamic Law and Women's Rights in Indonesia: A Case of Regional Sharia Legislation," *AHKAM: Jurnal Ilmu Syariah* 19, no. 1 (July 9, 2019), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/11717>.

⁷ Béligh Elbalti, "Equality between Men and Women in the Islamic Law of Inheritance," SSRN Scholarly Paper (Rochester, NY, 2018), 4, doi:10.2139/ssrn.3327773.

interpretations that deem women unworthy of receiving the same amount of inheritance as men, reflecting patriarchal views and discrimination against women.⁸ Therefore, some feminists call for a revision or reinterpretation of Islamic inheritance law to make it more fair and inclusive for women. In general, feminist views on Islamic inheritance law emphasize the need for changes and improvements in inheritance law to ensure gender justice and equal rights for women and men in the distribution of inheritance.⁹

On the basis of the above assumptions and views, a negative stigma arises over the application of Islamic inheritance law and gives birth to several criticisms that are often received by Islamic inheritance law. In Indonesia, the application of Islamic inheritance law often experiences several criticisms, such as: 1) Gender Discrimination: This criticism states that Islamic inheritance law in Indonesia differentiates inheritance rights between men and women, which harms women and reinforces gender stereotypes¹⁰; 2) Limited Applicability: This criticism states that Islamic inheritance law in Indonesia is often not applied correctly and fairly, resulting in inheritance problems and conflicts¹¹; 3) Contradiction with Social Norms: This criticism states that Islamic inheritance law in Indonesia often contradicts local social and cultural norms, making it difficult to be accepted and applied by the community¹²; 4) Rigidity and Limitations: This criticism states that Islamic inheritance law in Indonesia is often too rigid and inflexible, making it difficult to adjust to changing situations and contexts¹³.

However, criticism of the application of Islamic inheritance law in Indonesia must also be seen in a balanced and objective manner, and not ignore the basic values and objectives of the law. These criticisms must also be accepted and analyzed critically and constructively to understand how Islamic inheritance law can be contextualized and applied in a changing social and cultural environment. Thus, Islamic inheritance law can be applied fairly and accountably in Indonesia.

There are several previous studies that show the stigmatization of Islamic inheritance and the need for contextualization of Islamic inheritance law in Indonesia. There is a research on the practice of inheritance law in the community. This research shows that the practice of inheritance law in the community is often not in accordance with applicable Islamic law, because it is interpreted in a way

⁸ Ishaq Ahmad, Amir Alam, and Najib Khan and Rahat Ullah, "Inequality Regimes, Patriarchal Connectivity, And Women's Right To Property Inheritance In Rural Pakistan," *Journal of Positive School Psychology*, January 31, 2023, 1251–67.

⁹ Ilham Bettach, "Concepts of Justice and Injustice in the Gender Inheritance-Debate: Flexibility as a Doctrine for Contemporary Ijtihad 2021" 1 (May 28, 2021): 31–44; Hanafi and Tomeh, "Gender Equality in the Inheritance Debate in Tunisia and the Formation of Non-Authoritarian Reasoning."

¹⁰ Abdul Ghofur Anshori, "Sources and Legal Principles of Islamic Inheritance* Dynamics in Indonesia," *Journal Equity of Law and Governance* 2, no. 2 (October 27, 2022): 157–65, doi:10.55637/elg.2.2.5767.157-165; Retnowulandari Wahyuni, "Gender Perspective in Customary and Islamic Inheritance Law," 2022, <https://eudl.eu/doi/10.4108/eai.3-8-2021.2315073>.

¹¹ Adlan Adlan, "Perilaku Penundaan Pembagian Warisan dalam Masyarakat Islam di Kelurahan Tanrutedong Kabupaten Sidrap" (undergraduate, IAIN Parepare, 2021), <http://repository.iainpare.ac.id/2347/>; "Pembagian Tidak Adil, Harta Waris Jadi Sumber Konflik," *Universitas Islam Sultan Agung*, accessed February 6, 2023, <https://unissula.ac.id/pembagian-tidak-adil-harta-waris-jadi-sumber-konflik/>.

¹² Jamaludin, "Praktek Pembagian Harta Warisan Keluarga Muslim Dalam Sistem Kewarisan Patrilineal (Studi di Desa Sesetan Denpasar selatan Kota Denpasar)," *Fakultas Syariah UIN Maulana Malik Ibrahim Malang*, November 18, 2013, <https://syariah.uin-malang.ac.id/praktek-pembagian-harta-warisan-keluarga-muslim-dalam-sistem-kewarisan-patrilineal-studi-di-desa-sesetan-denpasar-selatan-kota-denpasar/>.

¹³ Defel Fakhyadi, "Patriarkisme Hukum Kewarisan Islam: Kritik Hukum Waris Islam dan Kompilasi Hukum Islam," *Hukum Islam* 21, no. 1 (July 26, 2021): 1–2, doi:10.24014/jhi.v21i1.10447; Faiqah Nur Azizah, "Pembaharuan Dalam Sistem Pembagian Waris Secara Proporsional," *JOURNAL of LEGAL RESEARCH* 3, no. 4 (2021): 511–12, doi:10.15408/jlr.v3i4.20935.

that is discriminatory against heirs¹⁴. Other research shows that there is a gender gap in inheritance law, where women often do not get the same share of inheritance as men, such as in terms of the amount and quality of property¹⁵. Another research, on the role of women in the distribution of inheritance shows that women are often less involved in the process of dividing inheritance, and the share of inheritance received by women is often lower than that of men.¹⁶

Negative stigma towards Islamic inheritance law can affect how the law is understood and accepted by the community. Therefore, it is important to strengthen awareness and knowledge of Islamic inheritance law through clear and accurate education and communication. On that basis, this research aims to reframe the negative stigma that arises from the application of Islamic inheritance law focusing on the contextualization of Islamic inheritance law in Indonesia. Using Amina Wadud's hermeneutics of *tawhid*, this research is expected to contribute in dismissing stigma against Islamic inheritance and at the same time offer a contextual and flexible model of inheritance distribution.

Research Method

a. Type of research

This research is a normative legal study using a qualitative approach.¹⁷

B. Target

This research aims to identify and explain the negative stigma associated with the application of Islamic inheritance law in Indonesia. In addition, this research is also intended to explain how the contextualization of Islamic inheritance law in Indonesia responds to negative stigma. This research introduces reconstruction to the basic concepts of Islamic inheritance law in accordance with the Indonesian context by applying the concept of *gono gini* or joint property, emphasizing the flexibility of Islamic inheritance and the discretion of judges).

c. Data, Instruments, and Data Collection Techniques

¹⁴ Nur Qalbi Husain and Musyifikah Ilyas, "Praktik Hukum Kewarisan Pada Masyarakat Islam (Studi Kasus Tahun 2017-2019)," *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam* 1, no. 2 (April 28, 2020): 31–45, doi:10.24252/qadauna.v1i2.12966; Muhammad Al Faruq, "Antara Idealisme Dan Praktek Masyarakat Dalam Pembagian Harta Waris," *Salimiya: Jurnal Studi Ilmu Keagamaan Islam* 1, no. 1 (March 19, 2020): 1–13; Suliyono Suliyono, "Konsep Keadilan Dalam Hukum Waris Perspektif Islam," *Syar'ie: Jurnal Pemikiran Ekonomi Islam* 3, no. 3 (February 10, 2020): 77–101, doi:10.51476/syarie.v3i3.164.

¹⁵ Halimah Basri et al., "Inheritance Rights of Women in Makassar Society: A Study of Living Qur'an and Its Implications for Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (October 3, 2022): 537–55, doi:10.22373/sjkh.v6i2.13882; Laksana Arum Nugraheni, Asmin Fransiska, and Putu Devi Kusumawardani, "The Dynamics of Customary Inheritance Law from the Perspective of Gender Equality in Klungkung District-Bali," *International Journal of Research in Business and Social Science* (2147- 4478) 11, no. 1 (February 14, 2022): 283–89, doi:10.20525/ijrbs.v11i1.1601; Amri Panahatan Sihotang, "Reposition of Widow By Death Divorce In Bataknesse Inheritance Law From Gender Perspective," *Diponegoro Law Review* 3, no. 1 (April 30, 2018): 84–103, doi:10.14710/dilrev.3.1.2018.84-103; Muhammad Yusuf and Ismail Suardi Wekke, "Inheritance and Gender Equality," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 15, no. 1 (December 29, 2018): 1–12, doi:10.21154/justicia.v15i1.1436.

¹⁶ Ifitah Utami, "The Role of Women in The Family Against The Distribution of Inheritance in The City of Palembang," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 20, no. 1 (June 30, 2020): 37–48, doi:10.19109/nurani.v20i1.4366; Ulfiani Rahman et al., "Men and Women in The Distribution of Inheritance in Mandar, West Sulawesi, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 27, 2022): 156–75, doi:10.22373/sjkh.v6i1.9094.

¹⁷ Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2006), 14.

As a normative legal study, this research using primary legal materials coming from Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts, Law number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, Compilation of Islamic law (CIL), and court decisions. As for secondary legal materials derived from books, especially Amina wadud's book entitled *Quran and woman*, journal articles, and other relevant sources.

d. Data Analysis Technique

The analysis in this research will use an interpretative descriptive approach. This approach will allow researchers to describe in detail the context and situation related to the application of Islamic inheritance law in Indonesia. The data that has been collected will be analyzed qualitatively using Amina Wadud's hermeneutics of *tawhid*.

Amina Wadud's hermeneutics of *tawhid*

The study conducted by Wadud employs the hermeneutical method, which pertains to three aspects: 1. the context in which the text was written (in the case of the Quran, where it was revealed); 2. the grammatical composition of the text (how it is said and what is said); and 3. the overall text or Weltanschauung. Wadud's focus is not on all texts in the Quran as in traditional exegesis. Instead, she concentrates only on the words in the Quran that, according to Wadud, actually have universal meanings but have been interpreted with gender bias by classical commentators. Therefore, these words need to be reinterpreted by providing historical information regarding the timing and period of the Quran's revelation. Wadud utilizes Fazlur Rahman's theory of interpretation. In interpreting the Quranic text, consideration must be given to the historical aspects of the revelation of the Quranic verses. Then, one must seek the ideal moral/spiritual concept of the Quran. Each interpreted verse is analyzed based on: 1. the context of the revelation of the verse; 2. discussion on similar topics in the Quran; 3. based on the same language aspect and syntactic structure used in other verses in the Quran; 4. based on the main principles in the Quran; and 5. Quranic Weltanschauung¹⁸. This model is named the Hermeneutics of Tawhid by Amina Wadud.¹⁹

According to Wadud, understanding of the text can be achieved by reading the "Prior Text" from the perspective of the individual reader in terms of language and the cultural context in which the text is read. The Prior Text enriches the reader's knowledge base to bridge the gap between the text and its readers from different contexts. Wadud argues that there is cultural imposition in understanding the Quran whereas the Quran claims its universality, thus it can be read within diverse cultural contexts.²⁰ Based on Wadud's reading of the Quran, the ideal moral or spiritual principles of the inheritance verses are justice and *naḥ'a* (benefit). Both are interrelated and cannot be separated as a consideration in the distribution of inheritance. Wadud further argued that ensuring overall fairness in the distribution of inheritance entails considering the *naḥ'a* (benefit) of the surviving beneficiaries. Wadud advocates for a careful examination of the Quranic provisions as a whole to facilitate a redistribution of inheritance in accordance with the circumstances of the deceased and their heirs. She emphasizes the importance of thoroughly assessing the members, combinations, and advantages involved in inheritance distribution. Additionally, Wadud provides an example, illustrating a scenario where a family comprises one son and one daughter. In cases where the widow is supported by the daughter, Wadud criticizes the decision to allocate a larger portion to the son, arguing that it disregards the genuine *naḥ'a* of the heirs.²¹

Stigmatization of Islamic Inheritance Law in Indonesia

¹⁸ Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*, 2nd edition (New York: Oxford University Press, 1999), 4–5.

¹⁹ Ibid., xii.

²⁰ Ibid., 23.

²¹ Ibid., 87.

Stigmatization of Islamic inheritance law in Indonesia can occur due to various factors, such as lack of knowledge and proper understanding of Islamic inheritance law²², application of the law that is not in accordance with the principles of sharia²³, and stereotypical views of Islam that have an impact on the stigmatization of Islamic inheritance, especially regarding women's rights²⁴. The lack of knowledge and understanding of Islamic inheritance law results in the non-application of the inheritance law in the community because they think that Islamic inheritance law is difficult to apply²⁵. This condition causes delays in the transfer of the testator's property to the heirs²⁶, claims on other people's inheritance rights²⁷, and conflicts between heirs due to dissatisfaction with the distribution of inheritance property²⁸. This stigmatization can affect how the public perceives and understands Islamic inheritance law, which can influence the acceleration or rejection of the law. Therefore, it is important to ensure that Islamic inheritance law is applied and understood correctly and fairly, through proper education and campaigns, as well as through the application of the law in accordance with sharia principles.

The need for contextualization of Islamic Inheritance Law in Indonesia

Contextualization of Islamic inheritance law in Indonesia is necessary to ensure that the law is in accordance with the current situation and conditions of Indonesian society, so that it can provide appropriate and fair solutions to inheritance issues in Indonesian Muslim society. It also helps to ensure that Islamic inheritance law remains in accordance with sharia principles and Islamic values, even though it is applied in different environments. There are several factors behind the need for contextualization of Islamic inheritance law in Indonesia, namely; social and cultural diversity, discriminatory treatment of certain groups, and inheritance conflicts.

²² Diah Sari Allon Sopie and Nova Orvia, "Kurangnya Pemahaman Masyarakat Tentang Pembagian Harta Waris Di Desa Panggungrejo Kabupaten Blitar," *Jurnal Hukum PRIORIS* 7, no. 1 (2019): 1–8, doi:10.25105/prio.v7i1.14949; Husain and Ilyas, "Praktik Hukum Kewarisan Pada Masyarakat Islam (Studi Kasus Tahun 2017-2019)," 41.

²³ Badrah Uyuni and Mohammad Adnan, "Application of Islamic Inheritance Law Among Muslim Society," *El-Arbah: Jurnal Ekonomi, Bisnis Dan Perbankan Syariah* 5, no. 1 (April 1, 2021): 20, doi:10.34005/elarbah.v5i1.1543; Eka Rahayu Purbenazir, "IMPLEMENTASI HUKUM WARIS ISLAM PADA MASYARAKAT KECAMATAN KEPAHANG KABUPATEN KEPAHANG," *Qiyas : Jurnal Hukum Islam Dan Peradilan* 2, no. 1 (April 11, 2017): 79, doi:10.29300/qys.v2i1.465.

²⁴ Sugiri Permana, "Kesetaraan Gender Dalam Ijtihad Hukum Waris Di Indonesia," *Asy-Syari'ah* 20, no. 2 (December 21, 2018): 117, doi:10.15575/as.v20i2.3210; Yessy Rahman, "Stereotip Muslimah Pada Film Submission Karya Sutradara Theo Van Gogh : Studi Analisis Semiotika Roland Barthes" 3, no. 2 (October 25, 2022), doi:10.36085/joiscom.v3i2.3914; Amira Nurifkah M, M. Abdul Somad, and Nurti Budiyan, "Pandangan Islam Mengenai Stereotip Perempuan Dalam Dunia Politik," *Tadris : Jurnal Penelitian dan Pemikiran Pendidikan Islam* 15, no. 1 (August 28, 2021): 85–94, doi:10.51675/jt.v15i1.115.

²⁵ Ria Rahma and Mohamed Shafei Moftah Bosheya, "Islamic Strategy Offers in The Implementation of The Science of Mawarist in Society : Study Centre of Mawarits Studies UNIDA Gontor," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 17, no. 1 (June 2, 2020): 95, doi:10.21154/justicia.v17i1.1732.

²⁶ Fathul Djannah and Muhammad Rizal, "The Delaying of Inherited Wealth Distribution and Its Impact: A Case Study of Family Fair in Medan City," *Randwick International of Social Science Journal* 1, no. 2 (July 31, 2020): 338–39, doi:10.47175/rissj.v1i2.64; Siti Rohana Mohamad et al., "Determinants of Failure and Delay in the Distribution of Faraid Among Muslims in Kelantan," September 2021, <http://myscholar.umk.edu.my/handle/123456789/2541>.

²⁷ Lalu Supriadi Bin Mujib, "Revitalisasi hukum waris Islam dalam penyelesaian kasus sengketa tanah waris pada masyarakat Sasak," *Ijtihad : Jurnal Wacana Hukum Islam dan Kemanusiaan* 19, no. 1 (June 1, 2019): 70, doi:10.18326/ijtihad.v19i1.67-88.

²⁸ Rahma and Bosheya, "Islamic Strategy Offers in The Implementation of The Science of Mawarist in Society," 94–95.

1. Social and cultural diversity

Indonesia is a country with high social and cultural diversity²⁹, so Islamic inheritance law must be understood and applied in the appropriate context. The social and cultural diversity in Indonesia has a great impact on the need for contextualization of Islamic inheritance law in Indonesia due to the existence of different customary inheritance traditions in each region in Indonesia. Customary inheritance traditions in each region in Indonesia vary, depending on local culture, religion and customs³⁰. There are several regions in Indonesia that adhere to the matrilineal inheritance system, where property and inheritance are passed from mother to daughter. There are also regions that follow a patrilineal inheritance system, where property and inheritance are passed from father to son³¹. Some regions in Indonesia that follow the matrilineal inheritance system are Enggano, Minangkabau, and Timor³². Meanwhile, some regions in Indonesia that follow the patrilineal inheritance system are Batak, Bali, Ambon, Irian Jaya, and Dani³³. There are also several other regions in Indonesia that adhere to the bilateral inheritance system such as Aceh, Java, Kalimantan, Lombok, Madura, Riau, Sulawesi, South Sumatra, East Sumatra, and Ternate³⁴.

In addition to the differences in customary traditions, as mentioned above, there are different views and beliefs about Islamic inheritance law in the community that may cause conflict and negative stigma towards Islamic inheritance law. There are at least three views of the Islamic inheritance model prevailing in Indonesia. First, Sunni inheritance, which is based on the patrilineal culture of Arab society³⁵. Second, Shi'ah inheritance which is characterized as parental or bilateral³⁶. Third, Hazairin's model of inheritance which is based on his ijtihad regarding the diversity of culture and kinship in Indonesia. Hazairin asserted that the desired law of inheritance according to the Qur'an and Hadith is individualized bilateral inheritance law³⁷.

2. Discriminatory treatment of certain groups.

There are certain groups such as women who are often discriminated against in terms of inheritance rights. Contextualization of Islamic inheritance law is necessary to ensure that the rights of all groups are applied and recognized. The implementation of Islamic inheritance law is often influenced by cultural and social stereotypes. These stereotypes can lead to unfair distribution of inheritance, as well as discrimination against such as women. One common stereotype is that

²⁹ Y. Purwanto et al., "Cultural Diversity and Biodiversity as Foundation of Sustainable Development," *Indonesian Journal of Applied Environmental Studies* 1, no. 1 (April 1, 2020): 2–10, doi:10.33751/injast.v1i1.1976.

³⁰ Sonny Dewi Judiasih and Efa Laela Fakhriah, "Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia," *PADJADJARAN JURNAL ILMU HUKUM (JOURNAL OF LAW)* 5, no. 2 (September 24, 2018): 315–30.

³¹ Wahyuni, "Gender Perspective in Customary and Islamic Inheritance Law."

³² "Hukum Pembagian Harta Warisan Yang Berlaku Di Indonesia," accessed February 8, 2023, <https://www.hukumonline.com/berita/a/pembagian-harta-warisan-lt61e8acde312c6/?page=2>.

³³ Kompas Cyber Media, "Sistem Kekerabatan Suku di Indonesia: Parental, Patrilineal, dan Matrilineal Halaman all," *KOMPAS.com*, February 7, 2022, <https://regional.kompas.com/read/2022/02/07/182256378/sistem-kekerabatan-suku-di-indonesia-parental-patrilineal-dan-matrilineal>.

³⁴ Mohammad Yasir Fauzi, "Legislasi Hukum Kewarisan Di Indonesia," *Ijtimaiyya: Jurnal Pengembangan Masyarakat Islam* 9, no. 2 (2016): 54, doi:10.24042/ijpmi.v9i2.949.

³⁵ Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau* (Jakarta: Gunung Agung, 1984), 58, [//perpustakaan.mahkamahagung.go.id/%2Fslims%2Fpusat%2Findex.php%3Fp%3Dshow_detail%26id%3D9136](http://perpustakaan.mahkamahagung.go.id/%2Fslims%2Fpusat%2Findex.php%3Fp%3Dshow_detail%26id%3D9136).

³⁶ Ibid.

³⁷ Hazairin, *Hukum kewarisan bilateral menurut quran dan hadits* (Jakarta: Tintamas Indonesia, 1982), 1, [//opac.fah.uinjkt.ac.id/index.php?p=show_detail&id=3817](http://opac.fah.uinjkt.ac.id/index.php?p=show_detail&id=3817).

women are incapable of managing their own finances, and therefore should receive a smaller share of inheritance³⁸. Patriarchal culture is also one of the reasons for such differences in inheritance shares³⁹. This is because the patriarchal culture is a conception built on the stigma of gender role polarization that places women lower than men.⁴⁰

3. Inheritance conflicts

Inheritance conflicts often arise in the practice of Islamic inheritance law in Indonesia, and contextualization of Islamic inheritance law can help resolve these conflicts. Conflicts may occur due to the application of different legal systems on inheritance in Indonesia, such as Islamic law, the Civil Code, and customary law⁴¹. Many Muslim communities in Indonesia resolve inheritance issues or perform inheritance distribution by using the customary law system or by other means⁴². Islamic inheritance law has long been a source of controversy in Indonesia, with the controversy generally framed in terms of an alleged conflict between Islamic and non-Islamic law⁴³. Moreover, a low understanding of the Islamic inheritance system has the potential to heighten conflicts among heirs because they believe that Islamic inheritance cannot provide a sense of justice⁴⁴.

Contextualization of Islamic inheritance law is necessary to ensure that Islamic inheritance law is properly understood and applied in the Indonesian social and cultural context, to address inheritance conflicts, and discrimination against certain groups.

Contextualization of Islamic Inheritance Law in Indonesia in reframing Negative Stigma in the perspective of *tawhid* hermeneutics

To overcome the negative stigma and discrimination that arise in the application of Islamic inheritance law, the Government of Indonesia has made efforts to contextualize Islamic inheritance law. By taking a more inclusive approach and paying attention to the social and cultural context of Indonesian society, contextualization is expected to create a fairer legal practice that is in accordance with the principles of justice and benefit (*maslahah*)⁴⁵. This is in line with Amina Wadud's

³⁸ Esteban Ortiz-Ospina and Max Roser, "Economic Inequality by Gender," *Our World in Data*, March 21, 2018, <https://ourworldindata.org/economic-inequality-by-gender>; "Female inheritance: A key to women's empowerment or another lock on their freedom?," accessed February 14, 2023, <https://voxdev.org/topic/institutions-political-economy/female-inheritance-key-women-s-empowerment-or-another-lock-their-freedom>.

³⁹ Muhammad Haque et al., "Women Rights to Inheritance in Muslim Family Law: An Analytical Study" 4 (April 13, 2020): 21, doi:10.46281/ijibm.v4i1.543.

⁴⁰ Faiha Oktrina, "Patriarchy Culture In The Pluridimensional Era Under Islamic Analysis Of Women's Position," *Modern Diplomacy*, April 10, 2022, <https://moderndiplomacy.eu/2022/04/10/patriarchy-culture-in-the-pluridimensional-era-under-islamic-analysis-of-womens-position/>.

⁴¹ Suwarti Suwarti, Decha Khunmay, and Stepan Abannokovya, "Conflicts Occurring Due to the Application of Different Legal Inheritance Systems in Indonesia," *Legality: Jurnal Ilmiah Hukum* 30, no. 2 (September 18, 2022): 214–27, doi:10.22219/ljih.v30i2.21020.

⁴² Masut and Agus Saron, "The Implementation System for the Distribution of Inheritance to Muslim Communities in Indonesia in the Perspective of Islamic Law," *Journal of Legal, Ethical and Regulatory Issues* 25, no. 1 (December 20, 2021): 1–1095.

⁴³ Mark Cammack, "Islamic Inheritance Law in Indonesia: The Influence of Hazairin's Theory of Bilateral Inheritance," *Australian Journal of Asian Law* 4 (2002): 295.

⁴⁴ Inna Fauziatul Ngazizah and Nabila Luthvita Rahma, "Unification of Islamic Inheritance Law Against the Plurality of Indonesian Muslims" (1st International Seminar on Sharia, Law and Muslim Society (ISLAMIS 2022), Atlantis Press, 2022), 313, doi:10.2991/978-2-494069-81-7_31.

⁴⁵ Siti Mahmudah, "The Contextualization of Sharia and Its Contribution to The Development Of The Indonesian National Law," *Al-'Adalah* 16, no. 1 (July 29, 2019): 17–40, doi:10.24042/adalah.v16i1.3393; Masut and Saron, "The Implementation System for the Distribution of Inheritance to Muslim Communities in Indonesia in the Perspective of Islamic Law"; Suliyono, "Konsep Keadilan Dalam Hukum Waris Perspektif Islam."

Hermeneutics, which also emphasize justice and *naʿfa* (benefit) in the distribution of inheritance⁴⁶. Some of the efforts made by the Indonesian government in responding to the stigmatization of the application of Islamic inheritance law when viewed from Amina Wadud's hermeneutics are as follows:

1. Understand and fight for Islamic inheritance law in the Indonesian context.

The Indonesian government can fight for Islamic inheritance law in the Indonesian context by making concrete efforts to reform Islamic family law and accommodate the diversity of laws in Indonesia. Islamic inheritance law must be understood and applied in the context of Indonesia, which has diverse traditions and cultures. On that basis, the Indonesian government has institutionalized and legislated Islamic inheritance into national law.⁴⁷ This is evidenced by the existence of Law No. 3 of 2006 concerning Amendments to Law No. 7 of 1989 concerning Religious Courts which stipulates that Religious Courts have the authority to examine, decide and resolve inheritance cases for those who are Muslim and that the option to choose what law will be used in the distribution of inheritance has been revoked. This means that those who are Muslims can only request the settlement of inheritance cases in the Religious Courts and that the law used as a guide in resolving inheritance issues is Islamic law based on Presidential Instruction No. 1 of 1991 known as the Compilation of Islamic Law. Although there is already a compilation of Islamic law that provides rules on inheritance, it is still a guideline so that it is not binding to be implemented by judges. In terms of the hermeneutics of tawhid, which emphasizes the guarantee of justice in the application of inheritance law, it is necessary for the government to make rules on Islamic inheritance in the form of laws.

2. Reconstruct the basic concepts of Islamic inheritance law in accordance with the Indonesian context.

Islamic inheritance law needs to be reconstructed to ensure that basic concepts such as inheritance rights, inheritance shares, and treatment of inheritance, are properly applied in the Indonesian context. The basic concepts of Islamic inheritance law in Indonesia are also applied by taking into account the diverse social and cultural contexts.⁴⁸ Indonesia is a country with a diversity of ethnicities, tribes, and customs. Therefore, the application of Islamic inheritance law must pay attention to this diversity and respect the cultural diversity of Indonesian society. Some of the approaches taken in this effort are by applying the concept of *gonogini* or joint property, emphasizing the flexibility of Islamic inheritance and the discretion of judges.

Application of the concept of *gonogini* property or joint property

The concept of joint property or *gonogini* in the context of Islamic inheritance in Indonesia refers to the principle that the property of husband and wife obtained during marriage is joint property which will be distributed between husband and wife and their heirs after one of them dies⁴⁹. The concept of joint property is something new because there is no similar application in early Islam. The provision of joint property is based on the family system, the roles and responsibilities of husband and wife in the context of Indonesian society⁵⁰. The provisions on joint property are

⁴⁶ Wadud, *Qur'an and Woman*, 87.

⁴⁷ Fauzi, "Legislasi Hukum Kewarisan Di Indonesia."

⁴⁸ Muhammad Patri Arifin, "Konsep Penerapan Hukum Kewarisan Islam Nusantara," *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 11, no. 1 (June 1, 2017): 93–120, doi:10.24239/blc.v11i1.300.

⁴⁹ Dwi Anindya Harimurti, "Perbandingan Pembagian Harta Bersama Menurut Hukum Positif Dan Hukum Islam," *Jurnal Gagasan Hukum* 3, no. 02 (December 29, 2021): 149–71, doi:10.31849/jgh.v3i02.8908.

⁵⁰ Efrinaldi Efrinaldi et al., "Pembagian Harta Bersama Istri Turut Mencari Nafkah Perspektif Hukum Islam Dan Hukum Positif Di Indonesia," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 2, no. 2 (2021): 82–104, doi:10.24042/el-izdiwaj.v2i2.11041.

regulated in Marriage Law no. 1 of 1974 in articles 35-37 which state that if there is a breakup of marriage, the joint property is regulated according to their respective laws.

Although the marriage law does not regulate how the technical division of joint property, the Compilation of Islamic Law stipulates in article 96 paragraph 1 that "in the event of a death divorce, half of the joint property becomes the right of the spouse who lives longer". Thus, if there is a breakup of marriage due to death, then before the property is distributed according to inheritance law, half of the inheritance that grew during the marriage will be given to the spouse who lives longer (husband or wife). The rest of the property after being given the joint property is what will later be divided by inheritance law. The application of this *gonogini* is indeed in line with the hermeneutics of *tawhid*, especially in providing *naf'a* guarantees for husbands or wives, but unfortunately the rules in the compilation of Islamic law are not binding because they are not in the form of laws. If the rule is included in a rule of law, it will certainly be better in providing a guarantee of *naf'a* to the husband or wife left by the heir

The Flexibility of Islamic Inheritance

The flexibility of inheritance distribution in the context of Islamic inheritance in Indonesia refers to the ability to adjust the distribution of inheritance according to the needs and social justice in the family. This principle allows for adjustments in the distribution of inheritance to take into account the conditions and interests of the heirs concerned so that the rules of Islamic inheritance are not rigid. When it comes to inheriting from different religious backgrounds, there is a growing movement to redefine it. This aims to grant inheritance rights to heirs of diverse religions. In the context of Indonesia, which is not a war zone, distinctions such as "kafir dzimmi" and "kafir harbi" become irrelevant. This shift encourages the granting of inheritance to heirs of different religions, although currently it is still through the mandatory will procedure⁵¹. In another case, the 2:1 ratio rule regarding the division of male and female heirs can be reinterpreted and adjusted to certain circumstances or events, making it possible to switch to a 1:1 ratio in the distribution of inheritance.

The distribution of inheritance with a 2:1 pattern based on the Qur'an surah al Nisa' (4) verse 11 is referred to by the Compilation of Islamic Law in article 176 which states: "If the daughter is only one, she gets half the share, if two or more of them together get two-thirds of the share, and if the daughter is together with the son, then the share of the son is two against one with the daughter." However, in its application, the judge can make other decisions according to the existing context. This is shown by the judge of the Medan Religious Court who gave a 1:1 share to male and female heirs as stated in the Medan Religious Court Decision Number 92/Pdt.G/2009/PA.Mdn.⁵²

Furthermore, it shows that the division with a 2:1 pattern is not a fixed price that can be changed at any time according to the context by considering a sense of justice to the heirs: "The judges' *ijtihad* on the division of inheritance as in the above case, both in the verse of the Qur'an and the Compilation of Islamic Law is not a fixed price of a provision that can never be changed again, especially when the problem is related to the sense of justice of the heirs, and the sense of justice itself is a legal *'illat* (cause that can lead to changes in the law)."⁵³ This condition is in accordance with Wadud's hermeneutics which also claims that 2:1 is not absolut. Based on the values of justice

⁵¹ Khairul Hasbi Hutagaol and Zainal Arifin Purba, "Inheritance of Different Religions from the Perspective of Shaykh Yusuf Al-Qaradhawi," *JURNAL AKTA* 10, no. 4 (December 17, 2023): 339–55, doi:10.30659/akta.v10i4.35236; Ahmad Qiram As-Suvi and Erfaniah Zuhriah, "Ratio Legis of Interfaith Inheritance Reformulation From The Perspective of Fiqh Minority: A Study of The Thoughts of Yusuf Al-Qardhawi And Taha Jabir Al-Alwani," *Jurnal Pembaharuan Hukum* 10, no. 3 (December 18, 2023): 361–86, doi:10.26532/jph.v10i3.33335.

⁵² Azizah, "Pembaharuan Dalam Sistem Pembagian Waris Secara Proporsional."

⁵³ Ibid.

and *naf'a*, the division of inheritance requires a consideration of all of the members, combinations, and benefits.⁵⁴

Judge's Discretion

The understanding of the role of judges in the Indonesian legal system has shifted. Previously, judges functioned as the mouthpiece of the law in the civil law tradition that characterizes the Indonesian legal system. However, at present, Indonesia is more likely to adopt a hybrid approach between the common law system and the Anglo-Saxon civil law system. The Indonesian legal system values the principle of legality whereby acts cannot be punished unless they are first regulated by law. However, at the same time, the law also emphasizes that judges in rendering decisions must explore, follow, and understand the legal values prevailing in society.⁵⁵

In many cases, judges are required to give consideration in deciding cases outside of the written rules, namely by exploring the norms that live and apply in society for the sake of justice. The role of judges in efforts to uphold justice through discretion can be seen in several cases, for example in the issue of marriage dispensation⁵⁶, divorce procedures that emphasize gender equality⁵⁷, and also in the issue of inheritance of heirs of different religions through mandatory wills (*wasiat wajibah*)⁵⁸. This is in line with the provisions of Law Number 48 of 2009 concerning Judicial Power in article 5 paragraph (1) which states: "Judges and constitutional judges are obliged to explore, follow and understand the values of law and a sense of justice that lives in society". On the other hand, President Instruction of the Republic of Indonesia Number 1 The Year 1991 on Compilation of Islamic Law in article 229 states: "Judges in resolving cases submitted to them, must pay close attention to the legal values that live in the community, so that their decisions are in accordance with a sense of justice". Judging from the hermeneutics of tawhid, there needs to be additional provisions that guide judges in exercising discretion, namely that discretion needs to consider the value of justice and *naf'a* for heirs.

3. Deliberation or mediation in Inheritance conflict resolution

Deliberation or mediation between parties should be facilitated and encouraged, to help understand and resolve inheritance conflicts in the Indonesian context. In practice, Indonesian society often uses deliberation or mediation mechanisms in resolving inheritance disputes. The principles of deliberation and mediation are in line with Islamic values that encourage dispute resolution through dialog and mutual agreement⁵⁹. In this case, the Indonesian government also facilitates by providing legislation for deliberation or mediation mechanisms in the distribution of

⁵⁴ Wadud, *Qur'an and Woman*, 87.

⁵⁵ ALI MA'SUM H. ENDANG, "Diskresi Hakim Dalam Pembaharuan Hukum Kewarisan Islam Di Indonesia (Studi Terhadap Putusan Mahkamah Agung Dalam Penerapan Wasiat Wajibah Bagi Ahli Waris Non Muslim)" (doctoral, UIN RADEN INTAN LAMPUNG, 2022), 11–12, <http://repository.radenintan.ac.id/18820/>.

⁵⁶ M. Syuib Syuib and Nadhilah Filzah, "Kewenangan Hakim Menerapkan Diskresi dalam Permohonan Dispensasi Nikah (Studi Kasus di Mahkamah Syar'iyah Jantho)," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 2, no. 2 (May 29, 2019): 433–64, doi:10.22373/sjhk.v2i2.4747.

⁵⁷ Ramadhita Ramadhita, Mahrus Ali, and Bachri Syabbul, "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (December 31, 2023): 2206347, doi:10.1080/23311886.2023.2206347.

⁵⁸ H. ENDANG, "Diskresi Hakim Dalam Pembaharuan Hukum Kewarisan Islam Di Indonesia (Studi Terhadap Putusan Mahkamah Agung Dalam Penerapan Wasiat Wajibah Bagi Ahli Waris Non Muslim)"; Hutagaol and Purba, "Inheritance of Different Religions from the Perspective of Shaykh Yusuf Al-Qaradhawi."

⁵⁹ Tyara Maharani Permadi, Djanuardi Djanuardi, and Hazar Kusmayanti, "Penyelesaian Sengketa Waris Dalam Masyarakat Adat Kampung Naga Berdasarkan Hukum Islam Dan Hukum Adat," *Kertha Semaya : Journal Ilmu Hukum* 9, no. 10 (August 12, 2021): 1826–27, doi:10.24843/KS.2021.v09.i10.p08.

inheritance to avoid conflict, with the provisions of the Compilation of Islamic Law (KHI) Article 183 which states: "The heirs can agree to make peace in the division of inheritance after each realizes its share".

In many cases, deliberation and mediation can reach a satisfactory solution for all parties without the need to involve a formal judicial process. This non-litigation mediation in Indonesia is known as Alternative Dispute Resolution (ADR) which is regulated in article 1 point 10 of Law number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution⁶⁰. Alternative Dispute Resolution has advantages compared to dispute resolution through litigation, including the voluntary nature of the process because there is no element of coercion, fast procedures, non-judicial decisions, confidential procedures, flexibility in determining the terms of problem solving, time-saving and cost-effective, high possibility of implementing agreements and maintaining working relationships⁶¹. Deliberation or mediation in inheritance conflict resolution is crucial as it ensures fairness and benefits for the heirs in accordance with the hermeneutics of Tawhid. By engaging in deliberative processes or mediation, parties involved in inheritance disputes have the opportunity to discuss and negotiate based on principles of justice and equity as espoused by the Tawhid hermeneutics perspective. This approach allows for a thorough consideration of individual circumstances, familial dynamics, and societal norms, ensuring that the distribution of inheritance aligns with both the letter and spirit of Islamic principles. Moreover, through mediation or deliberation, solutions can be crafted that not only address legal aspects but also uphold the broader values of compassion, solidarity, and mutual respect within the family unit.

Conclusion

Islamic inheritance law suffers from the stigmatization of rigidity and conservatism due to a lack of proper knowledge and understanding of Islamic inheritance law, application of the law that is not in accordance with sharia principles, and stereotypical views of Islam, particularly regarding women's inheritance rights. On that basis, contextualization of Islamic inheritance law in Indonesia is necessary to ensure that the law is in accordance with the current situation and conditions of Indonesian society. Viewed from the hermeneutics of tawhid the contextualization must of Islamic inheritance must prioritize the values of justice and *na'fa* in some aspects which include taking a more inclusive approach and paying attention to the social and cultural context of society, including by understanding and fighting for Islamic inheritance law in the Indonesian context, reconstructing the basic concepts of Islamic inheritance law in accordance with the Indonesian context, and encouraging deliberation or mediation to resolve inheritance problems.

While the research provides valuable insights into the contextualization of Islamic inheritance law in Indonesia, it is important to acknowledge its limitations especially concerning limited scope of contextualization and lack of comparative analysis. The study focuses primarily on the efforts made by the Indonesian government to contextualize Islamic inheritance law using the perspective of tawhid hermeneutics. Thus, future research may overlook the broader socio-cultural factors that influence the application of inheritance practices at the grassroots level. A more comprehensive examination of societal attitudes, beliefs, and practices could provide a more holistic understanding of the contextualization process. In addition, The research does not extensively compare the outcomes and implications of the Indonesian approach to other countries with similar challenges. A

⁶⁰ Ranny Apriani Nusa, Sitti Marwah, and Shera Yunita, "Mediasi Non Litigasi Terhadap Sengketa Pembagian Harta Warisan Di Kecamatan Moutong Kabupaten Parigi Moutong Provinsi Sulawesi Tengah," *Qiyas : Jurnal Hukum Islam Dan Peradilan* 6, no. 1 (April 5, 2021), doi:10.29300/qys.v6i1.4344.

⁶¹ Rifqani Nur Fauziah Hanif, "Arbitrase Dan Alternatif Penyelesaian Sengketa," Desember 2020, <https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13628/Arbitrase-Dan-Alternatif-Penyelesaian-Sengketa.html>.

comparative analysis, in future research, could have provided a richer perspective on the effectiveness of different contextualization strategies and their potential impact.

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