

ISSUES IN THE DISTRIBUTION OF INHERITANCE WITHIN FAMILIES: A STUDY IN SIDOKERTO VILLAGE, MOJOWARNO DISTRICT, JOMBANG REGENCY

Kuswanto^[1], Sugiana^[2], Muhammad Andri^[3]*
Darul Ulum University^{[1][2][3]}

29A Gus Dur St., Mojongapitindah, Mojongapit, Jombang Sub-district, Jombang
Regency, East Java 61419, Indonesia^{[1][2][3]}

*Email: mandri.undar@gmail.com

* Corresponding Author

Citation: Kuswanto et.al., 2025. Issues in the Distribution of Inheritance Within Families: A Study in Sidokerto Village, Mojowarno District, Jombang Regency. *Int' Journal of Law, Environment, and Natural Resources (INJURLENS)*, 5 (1), 46-56.

Academic Editor: Muhammad Khoiril Huda

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Abstract: *Inheritance distribution within families often triggers conflicts, particularly when differing legal principles intersect, such as customary law and Islamic law. This study investigates the inheritance distribution mechanism in Sidokerto Village, Mojowarno District, Jombang Regency, focusing on the tension between customary law, which promotes equal distribution among heirs, and Islamic law, which applies a 2:1 ratio favoring male heirs. The research aims to identify the dominant factors influencing these inheritance patterns, including local traditions, legal awareness, and the socio-economic background of heirs. Using an empirical-juridical approach, the study combines a statute approach (analysis of legal texts), a case approach (review of inheritance-related disputes), and a sociological approach (examination of social practices). Primary data were collected through interviews with the village head and community leaders, while secondary data included national inheritance laws, the Compilation of Islamic Law, the Quran, and scholarly literature on inheritance practices. Findings reveal that most of the Sidokerto Village community adheres to customary inheritance law, emphasizing equal rights among heirs regardless of gender. However, a smaller portion of the population follows Islamic inheritance principles. This divergence often leads to disputes, especially when family members have differing interpretations of applicable legal norms. Factors influencing inheritance decisions include long-standing local customs, varying levels of legal knowledge, and the economic status of heirs. In most cases, inheritance issues are resolved through family deliberation, often mediated by village officials. The inheritance process typically begins with asset inventory and heir identification, serving as the foundation for distribution decisions.*

Keywords: *Issues; Distribution; Inheritance.*

1. INTRODUCTION

The division of inheritance within families is one of the issues that often leads to conflicts, both in extended and nuclear families. This issue not only concerns financial aspects but can also affect relationships among family members. Inheritance distribution that does not meet expectations or is perceived as unfair often triggers disputes, even leading to legal action. Family conflicts frequently

observed in society are related to inheritance distribution, particularly in the division of inherited land. Many families become estranged due to disputes over inherited land. It is not uncommon for such conflicts to escalate to violence, including cases of murder, solely over inheritance disputes (Mu'minin, 2020).

In Indonesia, many disputes lead to both minor and major conflicts. According to the official 2023 report of the Supreme Court of the Republic of Indonesia (Mahkamah Agung RI), inheritance disputes in religious courts show a significant upward trend. The 2023 Annual Report of the Supreme Court of Indonesia includes statistical data on civil lawsuits in religious courts, with inheritance disputes accounting for 2,305 cases. These conflicts can arise from: 1) disputes over power, including sources of livelihood, inheritance, wealth, state land, 2) disputes over supremacy, governance, prestige/positions, and 3) disputes over women. Each of these conflicts is governed by specific laws. However, inheritance disputes often become a major topic of discussion, leading to family divisions (Febrina, 2020). The purpose of law, according to Islamic law, aligns with the objectives of law as proposed by L.J. van Apeldoorn. He stated that the purpose of law is to regulate social interactions peacefully. Another perspective suggests that the purpose of law is to create as much benefit as possible and provide legal certainty to all parties involved (Kharlie, 2013).

As we know, inheritance law in Indonesia is based on three different legal systems depending on the region, character, kinship, and religion. In Indonesia, inheritance issues are regulated by various legal frameworks. For Indonesian citizens who are Muslim, Islamic inheritance law is applied based on the Quran and Hadith as outlined in the Compilation of Islamic Law. For non-Muslim Indonesian citizens, customary and civil law applies. However, many Muslims also follow local customary law (Nugroho, 2016).

Currently, inheritance law, which is part of civil law, is still governed by dualism and pluralism. This is inseparable from the history of civil law in Indonesia. Before Indonesia's independence, due to Dutch colonial rule, society was divided based on the legal system of the Dutch East Indies government, as regulated in Articles 131 and 163 of the Indische Staatregeling (IS) (Noor, 2014). According to these provisions, European Civil Law (Burgerlijk Wetboek) was applied to Europeans, customary law to indigenous Indonesians, and specific customary laws to foreign Easterners. Over time, the Burgerlijk Wetboek (Civil Code) was also applied to foreign Easterners, and indigenous Indonesians were given the option to voluntarily submit to the Civil Code or customary law, including inheritance law (Nadriana, 2019). With the development of Islam, Islamic law, particularly in inheritance distribution, became applicable in certain regions. Thus, there is a pluralistic system of inheritance law in Indonesia: Western inheritance law, customary inheritance law, and Islamic inheritance law.

In essence, inheritance law deals with the transfer of a person's wealth or property upon their death to their heirs automatically (ijbari). Its scope includes the

management and settlement of the deceased's estate, covering the continuation of the deceased's rights and obligations to the heirs. The settlement of the estate determines who the heirs are, who is entitled to a share of the inheritance, the size of each share, the rules for distribution, and other matters related to inheritance distribution (Salman S, 2010).

In practice, differing interpretations or disagreements about fair distribution often arise. Some family members may feel that their share is insufficient or unfair compared to others, especially when the inheritance law applied is deemed unsuitable. As stated by the Head of Sidokerto Village, Mojowarno, Jombang Regency, *"Disputes within families often arise due to inheritance distribution that does not meet the expectations of some family members. Distribution is based on religious provisions, where the shares of male and female heirs differ. This causes some heirs to feel that their share is insufficient or unfair, leading to disputes and conflicts among family members."*

Inheritance distribution often becomes a source of conflict within families. In Sidokerto Village, Mojowarno, Jombang Regency, various dynamics arise regarding how this distribution is carried out, both in accordance with legal provisions (Das Sollen) and in practice (Das Sein). Therefore, this study aims to examine and conduct research titled "Problems of Inheritance Distribution within Families (A Study in Sidokerto Village, Mojowarno District, Jombang Regency)" by addressing the following questions: 1. How is the process of inheritance distribution carried out in Sidokerto Village, Mojowarno District, Jombang Regency? 2. What factors influence inheritance distribution in Sidokerto Village, Mojowarno District, Jombang Regency?

2. METHODS

Research on the effectiveness of law, which examines how law functions in society, is known as empirical or sociological legal research (Ali, 2011). This study employs an empirical juridical method to analyze the effectiveness of Islamic inheritance law by combining normative studies (positive law) and empirical field data. The research is descriptive-analytical, examining primary data (interviews with village heads and community leaders) and secondary data (regulations such as the Marriage Law and the Compilation of Islamic Law). The research approaches include the statute approach (regulation analysis), case approach (study of court decisions), sociological approach (impact of law in society), and conceptual approach (Islamic legal doctrines). Secondary data sources consist of primary legal materials (laws, KHI), secondary legal materials (the Quran, the 1945 Constitution), and tertiary legal materials (books, journals, media). This method ensures the research is not only theoretical but also examines the sociological implementation of the law. This research will determine the content or meaning of the legal rules used to resolve the legal issues discussed (Arifin, 2009).

3. RESULTS AND DISCUSSION

3.1. The Process of Inheritance Distribution in Sidokerto Village, Mojowarno District, Jombang Regency

The distribution of inheritance within a family is a complex process often influenced by various factors. These factors can stem from religious, cultural, legal, and family-specific conditions and needs.

The Quran has explained Islamic inheritance law and its provisions for each heir in detail, ensuring that no one is left out or that the inheritance is unfairly limited. Islamic law has been incorporated into several legal principles applicable to Muslims in Indonesia, such as marriage, gifts, endowments, and others. However, not all practices carried out by the community align with Islamic law. Research findings indicate that some community practices contradict Islamic principles, particularly in inheritance distribution, although a small portion of the community uses Islamic inheritance law.

In the Quran, specifically in Surah An-Nisa (4:11-12), it is explained that the share of a daughter is half that of a son, and it also regulates the inheritance of widowers, wills, debts, and the inheritance of siblings. Islamic inheritance law clearly stipulates the shares of each heir. When comparing customary inheritance distribution with Islamic law, significant differences arise because Islamic law provides clear guidelines for each heir's share, while in Sidokerto Village, Mojowarno District, Jombang Regency, customary law is predominantly used, with a small portion following Islamic law.

In the customary practices of Sidokerto Village, inheritance distribution is often discussed while the deceased is still alive, but the actual distribution occurs after their death. Each heir typically receives an equal share, except when parents allocate a portion of their assets to married children, citing increased needs and future provisions.

In practice, inheritance distribution in Sidokerto Village predominantly follows customary law, although a small portion uses Islamic law. This is evidenced by the statement of the Village Head, who said, *"Inheritance distribution in this village follows customary practices passed down from our ancestors, where each heir receives an equal share. However, a small portion of the community uses Islamic inheritance principles."*

Several steps are taken in the inheritance distribution process in Sidokerto Village, including:

a. Inventory of Inheritance Assets

When someone passes away, one of the first steps the family must take is to ensure that all the deceased's assets are properly recorded. This stage, known as inheritance asset inventory, is a crucial foundation for subsequent steps in inheritance distribution. The inventory aims to provide a clear picture of the

deceased's assets, ensuring that the management process is structured and fair.

The process begins with identifying all types of assets owned by the deceased, including land, buildings, vehicles, jewelry, bank savings, and other economically valuable assets. Any debts owed by the deceased are also recorded as part of the responsibilities to be settled before inheritance distribution.

The inventory is usually conducted by the deceased's closest family members, as they are most familiar with the assets. However, to ensure integrity and transparency, the process is overseen by a neutral third party, typically village officials.

Village officials or community leaders are often present as witnesses during the inventory to ensure that all assets are honestly recorded and nothing is concealed. Their presence helps build trust among all parties involved, ensuring that the process is conducted responsibly. Village officials can also provide valuable input, especially for assets with unclear ownership status, such as land without certificates or family businesses.

A detailed and accurate inventory plays a strategic role in preventing future family conflicts. If all assets are properly recorded from the outset, the likelihood of disputes over inheritance rights can be minimized. This process requires diligence, time, and cooperation from all parties involved. However, the results will greatly benefit family harmony and ensure that inheritance distribution adheres to principles of fairness. Therefore, the inventory of the deceased's assets is not merely an administrative step but also a moral responsibility to the deceased and all parties entitled to the inheritance.

b. Determination of Heirs

After all the deceased's assets are recorded and calculated, the next step in the inheritance management process is determining who is entitled to receive a share of the inheritance. This stage is crucial as it involves the fair distribution of rights in accordance with applicable laws or customs. In Sidokerto Village, the determination of heirs generally follows customary inheritance principles, although a small portion of the community uses Islamic inheritance law.

Heirs are individuals or parties entitled to receive inheritance from the deceased based on kinship or other legal provisions. In Islamic law, heirs are grouped based on kinship and their relationship with the deceased.

The determination of heirs involves identifying the kinship between the deceased and the surviving family members. This process requires honesty and cooperation from all parties to avoid future conflicts. Common steps include:

Recording Family Members: All family members with a direct relationship to the deceased are recorded, including children, spouses (husband or wife), parents, and other relatives.

Resolving Disputes Through Deliberation: In some cases, disagreements arise over who is entitled to the inheritance. Family deliberation, often involving village officials or community leaders, is the best way to resolve such issues.

c. Role of Village Officials and Community Leaders

Inheritance distribution is a process that often involves various parties to ensure that everything runs smoothly, fairly, and in accordance with applicable rules. In Sidokerto Village, village officials, religious leaders, and customary leaders play a strategic role as mediators and advisors. This combination of administrative, religious, and customary approaches helps maintain family harmony while ensuring fairness in inheritance distribution.

Village officials, such as the village head and secretary, often act as neutral parties in the inheritance distribution process. They mediate between heirs, especially when disagreements or conflicts arise over inheritance distribution. The neutrality of village officials provides a sense of security to families dealing with the emotional loss of a family member.

Village officials also prepare necessary documents, such as:

- 1) Inheritance Certificates
- 2) Heir Rights Certificates
- 3) Joint Heir Statements

Several issues related to inheritance distribution in Sidokerto Village involve the mediation of village officials as neutral parties.

First Case: Inheritance distribution for the late Aripin, who had three children. The inheritance included a plot of land and a house located on Jalan Mayor Tumijo, Budug, Sidokerto. The heirs were:

M. Prastio (son)
Eka Ramadiana (daughter)
Ningsih Utami (daughter)

The inheritance was divided equally among the heirs, with both sons and daughters receiving equal shares, following customary inheritance principles.

Second Case: Inheritance distribution for the late Shodik, who had four children:

Bambang Hariono(son)
Lilik Hariati(daughter)

The heirs agreed to divide the inheritance equally to prevent disputes.

Fourth Case: Inheritance distribution for the late Mr. Marji, which caused conflicts among his six children:

Jafar(son)
Mariasih(daughter)
Ngatirin(son)
Ponisri(daughter)
Mislikah(daughter)
Ngadi(son)

The conflict arose from disagreements over the distribution method, with some family members dissatisfied with the Islamic inheritance principle that gives males a larger share than females. The dispute was resolved through mediation involving village officials, resulting in an agreement to follow Islamic inheritance principles.

In most cases, inheritance disputes in Sidokerto Village are resolved using customary law, although a small portion of the community uses Islamic inheritance principles.

The concept of justice in inheritance distribution is heavily influenced by cultural and religious values. In Islamic law, distributive justice is applied based on the roles and responsibilities of each individual in the family, while in civil law, egalitarian justice is applied by giving equal rights to each individual.

3.2. Factors Influencing Inheritance Distribution in Sidokerto Village, Mojowarno District, Jombang Regency

The process of inheritance distribution involves steps taken to allocate the assets and estate of a deceased person to their rightful heirs. This process varies depending on the applicable laws, religion, and family traditions or agreements. In Indonesia, inheritance distribution can be influenced by Islamic inheritance law, customary law, and civil law.

It has become a phenomenon in society that the application of the 2:1 inheritance ratio is often abandoned. Various methods are used by Muslims, including religious leaders, to avoid this type of inheritance distribution. For example, some distribute assets before death or divide the inheritance equally. Efforts to avoid Islamic inheritance law stem from the perception that it no longer reflects justice and may disadvantage one party. Islamic inheritance law is no longer seen as a blessing and is often avoided by Muslims themselves.

The application of Islamic law without elements of mercy should be reconsidered. Islamic law was created as a solution to the existence of a legal system that was not humanistic, as was the case at the beginning of Islam. There are many instances where scholars, including the companions of the Prophet, deviated from the text or mainstream Islamic law, sometimes even contradicting the Quran and Hadith, as seen in the actions of Caliph Umar bin Khattab.

In the modern context, where the roles of women are increasingly equal to those of men, distributive justice should be based on the economic well-being of the heirs. This aligns with the objectives of Islamic law (maqashid syariah), especially in families with significant economic disparities. In such cases, inheritance distribution should be based on need. For example, if a brother has a stable and prosperous career while his sister is less fortunate, the sister should receive a larger share of the inheritance. Conversely, if the sister is more financially stable, the brother should receive a larger share. If inheritance distribution is not based on the needs of the heirs, it can lead to inequality and injustice. Distributing inheritance based on need is not contrary to Islamic law; rather, it aligns with the spirit of Islamic law (Al-Halawi, 2003).

Indonesian Islamic scholar Munawir Syadzali proposed a deconstruction of inheritance distribution. According to Munawir, the 2:1 inheritance ratio does not reflect the spirit of justice for modern Indonesian society. This is evidenced by the many deviations from this principle, both by laypeople and scholars.

Furthermore, inheritance distribution in Islam is a gradual teaching. Just as the prohibition of alcohol was introduced gradually, the rights of women in inheritance were also introduced gradually. In modern times, women have roles equal to men in society, making it logical for women to have equal inheritance rights.

In practice, inheritance distribution in Sidokerto Village is influenced by several factors, including legal, customary, religious, and social practices. Research on this issue reveals the complexity of the pluralistic legal system in Indonesia. The factors influencing inheritance distribution in Sidokerto Village include:

1) Pluralism of Inheritance Law Systems

Indonesia adheres to a pluralistic inheritance law system, including Islamic law, customary law, and civil law. In Sidokerto Village, the majority of the community uses customary law for inheritance distribution, although a small portion of families follow Islamic law.

- Islamic Law, Inheritance distribution is based on the Quran (Surah An-Nisa: 11-12) and the Compilation of Islamic Law (KHI), where male heirs receive twice the share of female heirs.
- Customary Law, Often applied with the principle of equality, dividing the inheritance equally regardless of gender.
- Civil Law (BW), Based on the Civil Code, it is used in certain contexts, although rarely chosen by the village community.

2) Local Traditions and Customs

Local traditions play a significant role in determining inheritance distribution methods. In Sidokerto Village, customary inheritance distribution is carried out based on long-standing traditions passed down through generations. Equality of Rights, In customary law, inheritance is divided equally between male and female heirs,

reflecting the principles of togetherness and fairness within the family. Family Deliberation, This process is often conducted to reach a peaceful agreement, ensuring that the inheritance distribution is acceptable to all parties.

3) The Role of Village Officials and Community Leaders

Village officials, such as the village head, hamlet head, and village secretary, often act as mediators in inheritance disputes. Village officials help ensure that the distribution is carried out fairly and in accordance with the agreement. Documentation, Village officials prepare inheritance certificates and other legally valid administrative documents. Neutral Mediation, The presence of village officials as neutral parties helps ease tensions and facilitates family deliberations.

4) Level of Legal Understanding

The lack of public understanding of Islamic inheritance law and civil law often leads to differing interpretations. Ignorance of Islamic Inheritance Rules, Some families consider Islamic law unfair because male heirs receive a larger share than female heirs. Social Influence, The choice to follow customary law is often driven by social pressure to maintain family harmony and avoid disputes during inheritance distribution.

5) Socio-Economic Conditions of the Family

Economic factors also influence inheritance distribution. Families with members who require greater financial support often opt for unequal distribution. In this context, the concept of distributive justice should be applied in inheritance distribution.

In the modern context, proportional distributive justice should be based on the needs of the heirs. For example, if a brother has a prosperous career and ample wealth while his sister is less fortunate, the sister should receive a larger share of the inheritance. This is because her needs are greater than those of her brother, who has a stable career and better economic conditions. Conversely, if the brother is in greater need than the sister, he should receive a larger share. If inheritance distribution is not based on the needs of the heirs, it can lead to inequality and injustice. Distributing inheritance based on the heirs' needs is not a concept that contradicts Islamic law; rather, it aligns with the spirit of Islamic legal principles.

6) Conflict and Resolution

Disputes over inheritance distribution often arise due to dissatisfaction among the parties involved. These conflicts are typically resolved through mediation by village officials. Village officials, along with Babinsa (village supervisory non-commissioned officers) and Babinkamtibmas (village security and order officers), assist in resolving disputes through discussions and deliberations. If an agreement is reached, the outcome of the mediation is documented in a written agreement, signed and witnessed by village officials and community leaders.

4. CONCLUSION

The research findings on inheritance distribution in Sidokerto Village, Mojowarno District, Jombang Regency, indicate that inheritance practices are influenced by legal pluralism, encompassing customary law, Islamic law, and socio-economic factors within families. The majority of the community in Sidokerto Village still adheres to the customary inheritance system, which emphasizes the principle of equality, where each heir receives an equal share regardless of gender. This system is considered to better reflect communal values and maintain family harmony. However, a small portion of the community continues to follow Islamic inheritance law, based on the Quran, specifically Surah An-Nisa (4:11-12). Under this system, distribution follows the principle of two shares for males and one share for females. Nevertheless, the implementation of Islamic inheritance law often leads to conflicts, as it is perceived to not reflect distributive justice in current socio-economic conditions.

The research also found that factors such as tradition, local customs, and the role of village officials and community leaders significantly influence inheritance distribution patterns. Village officials act as mediators to maintain neutrality and ensure that family agreements are reached peacefully. They also assist in administrative tasks, such as preparing inheritance certificates, which serve as the legal basis for inheritance distribution. In terms of process, inheritance distribution begins with the inventory of the deceased's assets, the determination of heirs, and family deliberations. During these deliberations, decisions often prioritize justice based on the heirs' needs. For example, heirs with greater economic needs are given larger shares compared to those who are financially stable. This aligns with the principle of *maqashid syariah*, which adapts legal rulings to societal conditions to achieve more proportional justice.

The issues identified in this research highlight that the pluralistic inheritance legal system often leads to disputes among heirs, particularly when there are differing views between customary law and Islamic law. Mediation by village officials and community leaders plays a crucial role in resolving conflicts peacefully. In some cases, written agreements are drafted as a form of mutual consensus to prevent future conflicts. Overall, inheritance distribution in Sidokerto Village reflects the complexity of the interplay between law, customs, and societal needs. This underscores the necessity for a flexible and contextual approach in applying inheritance law to achieve justice and maintain family harmony.

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- Wawancara dengan Desa Sidokerto, Mojowarno, Kabupaten Jombang, tanggal 1 November 2024 pukul.20.00
- Laporan Tahunan 2023 Mahkamah Agung RI, Halaman 106–107. diakses melalui https://kepaniteraan.mahkamahagung.go.id/images/laporan_tahunan/FA-LAPTAH_MA_2023-low.pdf