

## DISTRIBUTION OF INHERITED PROPERTY WITHOUT THE APPLICATION OF ISLAMIC INHERITANCE LAW IN TEMANGGUNG



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### Abstract

This research examines the paradox of inheritance division without applying fikih mawaris in Temanggung Regency. The purpose of this study is to analyze how the practice of inheritance division that occurs in the Temanggung community runs without referring to the principles of fikih mawaris, as well as to explore the causes, impacts, and implications of this discrepancy on the applicable inheritance legal system. This research uses a qualitative approach with a case study method involving in-depth interviews with heirs, religious leaders, legal practitioners and the local community. The results show that although most Temanggung people have basic knowledge of Islamic inheritance law, the division of inheritance carried out often does not follow the provisions of fikih mawaris. This is due to the lack of understanding of fikih mawaris, the dominant influence of local customs, and the discrepancy between inheritance law practices and state legal regulations, especially in terms of the division of inheritance between children and wives. The implications of this mismatch create injustice in the distribution of inheritance, which is often detrimental to women and children from the wife's weaker position in society. This research suggests the need to record the division of inheritance in the village/kelurahan and even the existence of a deed of inheritance to be certain in handling cases of inheritance division without fikih mawaris.

### Abstrak

Penelitian ini mengkaji paradoks pembagian harta warisan tanpa menerapkan fikih mawaris di Kabupaten Temanggung. Tujuan dari penelitian ini untuk menganalisis praktik pembagian harta warisan yang dilakukan oleh masyarakat Temanggung berjalan tanpa merujuk pada prinsip-prinsip fikih mawaris, serta untuk menggali penyebab, dampak, dan implikasi dari ketidaksesuaian ini terhadap sistem harta waris yang berlaku. Penelitian ini dilaksanakan menggunakan pendekatan kualitatif dengan menerapkan metode studi kasus, yang melibatkan teknik wawancara mendalam terhadap para ahli waris, tokoh agama, praktisi hukum, serta anggota masyarakat di wilayah terkait. Hasil penelitian menunjukkan bahwa meskipun sebagian besar masyarakat Temanggung memiliki pengetahuan dasar tentang harta waris Islam, pembagian waris yang dilakukan seringkali tidak mengikuti ketentuan fikih mawaris. Hal ini disebabkan oleh kurangnya pemahaman tentang fikih mawaris, pengaruh adat istiadat lokal yang lebih dominan, serta ketidaksesuaian antara praktik harta waris dengan regulasi hukum negara, khususnya dalam hal pembagian waris antara anak dan istri. Implikasi dari ketidaksesuaian ini menciptakan ketidakadilan dalam distribusi harta warisan, yang seringkali merugikan pihak perempuan dan anak-anak dari pihak istri yang lebih lemah posisinya dalam masyarakat. Penelitian ini menyarankan perlunya pencatatan pembagian harta waris di desa/kelurahan dan bahkan adanya akta waris untuk menjadi kepastian dalam menangani kasus pembagian warisan tanpa fikih mawaris.

## INTRDUCTION

Death is something that will certainly be experienced by all living beings, and every person will eventually face and experience it. For Muslims, death is not the end of life. After a person passes away, all matters related to them, including property and debts, remain responsibilities that must be settled. Therefore, these affairs become the responsibility of the family left behind.<sup>1</sup> In Islam, there are specific provisions regarding the estate of a deceased person, known as *fara'id* or *fiqh al-Mawarith* (Islamic inheritance law). This concept serves as the primary foundation for regulating the distribution of inheritance between the deceased (the testator) and the heirs. In Islamic teachings, the distribution of inheritance also determines who is entitled to receive it and the proportion of shares allocated to each heir.<sup>2</sup>

Islam recognizes the right of property ownership for every individual without restriction by age. This right also includes the transfer of ownership to heirs, whether while the owner is still alive or after death.<sup>3</sup> In accordance with Law No. 7 of 1989 on Religious Courts, Article 1 paragraph (1), the Religious Court has the authority and duty to handle, examine, and decide cases at the court of first instance involving Muslims, particularly in matters such as marriage, waqf, almsgiving, wills, and grants, which are conducted in accordance with Islamic law.<sup>4</sup> Because inheritance property is an important means of property ownership, Islam gives it serious attention. Inheritance is also related to a sense of social responsibility due to the existence of clear rules governing it.<sup>5</sup> It should also be noted that in many cases there is not only one heir, as many people have families. Therefore, inheritance becomes an important matter in order to determine who is entitled to receive the estate.<sup>6</sup>

After all funeral rites have been completed, Islamic law stipulates the obligation to promptly distribute the inheritance left by the deceased to the rightful heirs.<sup>7</sup> If conflicts cannot be avoided, the Religious Court has the authority to make a decision. In accordance with Article 1 paragraph (1) of Law Number 7 of 1989 on Religious Courts, the Religious Court institution has the responsibility and authority to adjudicate, examine, and resolve cases at the court of first instance involving Muslims, particularly in matters of marriage, waqf, charity (*şadaqah*), wills, and grants, as governed by Islamic law.<sup>8</sup>

<sup>1</sup> N Faizza and M Saputra, "Analisis Warisan Terbuka Menurut BW (Burgelijk Woetboek) Dan Hukum Islam," *Jurnal Ilmu Hukum Dan Politik* 1, no. 3 (2023).

<sup>2</sup> Febriastri Aryani Ratu, "Praktek Pembagian Harta Waris Masyarakat Suku Lio Perspektif Fikih Mawaris ( Studi Kasus Di Kecamatan Ndona , Kabupaten Ende , Nusa Tenggara Timur )," *Maqasid: Jurnal Studi Hukum Islam* 6, no. 1 (2017).

<sup>3</sup> Ainul Masruroh and Arum Widiastuti, "Hak Waris Tanah Bagi Anak Yang Lahir Dari Perkawinan Campuran Menurut Hukum Perdata Internasional Dan Hukum Islam," *Jurnal Hukum Dan Kenotariatan* 6, no. 3 (2022): 1423 – 41, <https://doi.org/10.33474/hukeno.v6i3.16472>.

<sup>4</sup> Ahmad Saidi Hasibuan and Ridho Syahputra Manurung, "Analisis Hukum Mutlak Ahli Waris Ditinjau Dari KUH Perdata Dan Hukum Islam," *Yustisi Jurnal Hukum Dan Hukum Islam* 10, no. 3 (2023): 393 – 416.

<sup>5</sup> Mukhlisin Fiki, "Implementasi Mediasi Sengketa Waris Oleh Firma Hukum Dirgantara Law Tinjauan Hukum Kewarisan Islam" (IAIN Metro, 2024).

<sup>6</sup> Yulia Rahmi Rahmi, Syafwan Rozi, and Helfi Helfi, "The Qaul Qadim and Qaul Jadid: A Sociological Review of The Evolution of Islamic Law," *Al-Hurriyah: Jurnal Hukum Islam* 9, no. 2 (2024): 143 – 58. Noraini Noordin et al., "Delay in Islamic Inheritance Claim – An Ignorance Issue," *Procedia - Social and Behavioral Sciences* 90 (2013): 504 – 12, <https://doi.org/10.1016/j.sbspro.2013.07.120>.

<sup>7</sup> Lisa Mayasari, "Penyelesaian Sengketa Warisan Akibat Penguasaan Harta Oleh Salah Satu Ahli Waris (Studi Kasus Peninggalan Harta Warisan Di Kelurahan Kapuas Kanan Hulu Kabupaten Sintang)," *Jurnal Prodi Ilmu Hukum UNTAN* 5, no. 3 (2017), <https://doi.org/1011131117>.

<sup>8</sup> Pemerintah Republik Indonesia, *Undang-Undang Republik Indonesia Nomor 7 Tahun 1989 Tentang Peradilan Agama* (Jakarta, 1989). Wirda Ningsih Octavia and Iskandar Iskandar, "Role of Religious Courts in Settlement of Inheritance Disputes in Indonesia," *International Journal of Social Science and Community Service* 2, no. 3 (2024): 114 – 18, <https://doi.org/10.70865/ijsscs.v2i3.23>. Zuhrah, I. Gusti Ayu Ketut Rachmi

Disputes over the distribution of inheritance in the Religious Court are resolved through a litigation process in accordance with the applicable provisions of Islamic law.<sup>9</sup> Accordingly, the resolution is carried out through lawful procedures, and court decisions have binding legal force and must be implemented by all parties involved in the dispute.<sup>10</sup>

In Padureso Village, Jumo Subdistrict, Temanggung Regency, there is a case involving an individual who was considered wealthy and owned a substantial amount of property. However, after his death, the family did not immediately distribute the estate.<sup>11</sup> Based on the researcher's observations, it was found that the deceased had not clarified the ownership of his assets and had never made a will regarding the distribution of his inheritance. Until now, the estate has not been distributed to the family on the pretext of avoiding conflict.<sup>12</sup> Another case occurred in Morobongo Village, Jumo Subdistrict, where a family member passed away some time ago without leaving a will regarding the distribution of inheritance. As a result, some heirs did not accept the division of the estate that was carried out by a local religious figure.<sup>13</sup>

In several cases examined, there were family members who did not receive any share of the inheritance, even though legally they were entitled to it as heirs. This situation often occurs because such heirs lack the courage or legal knowledge to pursue formal legal channels. Consequently, they ultimately lose their rights to the inherited property.<sup>14</sup> However, in other areas, such as Bondalem Village, Ngadirejo Subdistrict, Temanggung Regency, inheritance distribution is conducted according to local customary practices that emphasize the principle of kinship.<sup>15</sup> When the deceased does not leave a will regarding inheritance, the family distributes the estate equally in terms of quantity, regardless of whether the heirs are male or female. This practice has become a local tradition and has not led to conflict.<sup>16</sup>

The aim of this research is to explore inheritance distribution practices in Temanggung Regency that do not follow the principles of *fara'id*, as demonstrated by several cases highlighted earlier. These practices, which deviate from Islamic inheritance laws, often lead to unfair and unequal wealth distribution among heirs, impacting family structures and the well-being of those involved. The researcher deems it important to examine the underlying factors contributing to these deviations, including social, cultural, and legal barriers that hinder the application of Islamic inheritance rules. Furthermore, this study seeks to assess the consequences of such practices on the heirs' financial security and social relations, while offering potential solutions to promote more equitable

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Handayani, and Burhanuddin Harahap, "Legislative Legal Politics of Inheritance Law in Indonesia," *Journal of Ecohumanism* 3, no. 6 (2024): 910 – 16, <https://doi.org/10.62754/joe.v3i6.4059>.

<sup>9</sup> Ita Musarrofa and Husnul Muttaqin, "Maqasid Sharia Jasser Auda Theory: Systems Approach to Islamic Family Law in the Digital Era," *Al-Hurriyah: Jurnal Hukum Islam* 9, no. 2 (2024): 194 – 208.

<sup>10</sup> Dinia Ferdiana, "Studi Kasus Penundaan Pembagian Warisan Putusan Nomor 101/Pdt.G/2011/Pn.Srg," *Jurnal Hukum Dan Kewarganegaraan* 9, no. 6 (2024), <https://doi.org/https://doi.org/10.3783/causa.v9i6.8560>.

<sup>11</sup> Saifullah Basri, "Hukum Waris Islam (Fara'id) Dan Penerapannya Dalam Masyarakat Islam," *Jurnal Kepastian Hukum Dan Keadilan* 1, no. 2 (2020): 37 – 46.

<sup>12</sup> Ahmidi Ahmidi, Ibnu Elmi A S Pelu, and Reza Noor Ihsan, "The Role of Central Kalimantan Indonesian Ulama Council (MUI) in Encouraging Muslim Participation in Regional Elections: Perspective of Fatwa on Prohibition of Abstention," *Al-Hurriyah: Jurnal Hukum Islam* 9, no. 2 (2024): 171 – 82.

<sup>13</sup> Sarah Humaira, "Kedudukan Ahli Waris Pengganti Dalam Hukum Waris Islam," *Jurnal Hukum Al-Hikmah: Media Komunikasi Dan Informasi Hukum Dan Masyarakat* 2, no. 3 (2021): 557 – 68.

<sup>14</sup> Andi Tenri Leleang Tenri Leleang and Asni Zubair Asni Zubair, "Problematika Dalam Penerapan Hukum Waris Islam," *Al-Bayyinah* 3, no. 2 (2019): 220 – 34.

<sup>15</sup> Latifah Ratnawaty, "Pelaksanaan Konsep Al Radd Dalam Pembagian Waris Berdasarkan Hukum Waris Islam," *Yustisi* 5, no. 1 (2021): 57 – 69.

<sup>16</sup> Ratnawaty.

inheritance distribution. By analyzing these practices, the research aims to provide recommendations for restoring fairness in accordance with Islamic law, ensuring justice and addressing the challenges faced by communities in adhering to these principles.

## METHODS

This study employs a qualitative approach using descriptive analytical methods to reveal the facts surrounding inheritance distribution without the application of *fiqh al-Mawarith* in Temanggung Regency. The study aims to examine the factors underlying the practice of inheritance distribution that does not adhere to *fiqh al-Mawarith* in Temanggung Regency. Furthermore, this research also discusses Islamic perspectives on the implementation of such practices and subsequently draws relevant conclusions. The research location is Temanggung Regency, specifically in several areas: first, Kundisari Village, Kedu Subdistrict; and second, Madureso Village, Temanggung Subdistrict. These locations were selected because, in practice, inheritance distribution is carried out based on prevailing customary traditions without considering Islamic law. In addition, the consequences of such practices have also led to conflicts among family members. Therefore, the researcher considers it necessary to conduct an in-depth study. The duration of this research began with the issuance of the research permit and lasted approximately two (2) months, from January to February. This period was divided into two stages: the first month was devoted to data collection, and the following month was allocated for data processing and analysis.

Data were collected through interviews, observation, and documentation. The interviews were conducted in an unstructured manner because the cases encountered in the field varied, requiring the researcher to adapt the questions to each specific case. The informants in this study included heirs involved in inheritance distribution without *fiqh al-Mawarith*, representatives of the Indonesian Ulema Council (MUI) of Temanggung Regency, and religious figures involved in the inheritance distribution in the research locations. In addition, several other relevant parties were also included as informants to support the completeness of the data. Observations were carried out by examining several similar cases and organizing the findings systematically, with close attention to the intentions and interests reflected in each case. Documentation was used to obtain data in the form of photographs, files, and other materials, such as heirs' testimonies, which served as authentic evidence. The data analysis technique applied in this study was inductive qualitative analysis. Qualitative methods were employed as research procedures that generate descriptive data in the form of written or spoken words derived from the heirs and other relevant informants.<sup>17</sup> The data obtained were then classified and analyzed using an inductive reasoning approach, namely by analyzing specific data and subsequently drawing general conclusions.

## RESULT AND DISCUSSION

### RESULT

#### Factors Influencing Inheritance Distribution Without Fiqh al-Mawarith

Based on interviews and observations, several factors were identified that lead the people of Temanggung to prefer not to refer to *fiqh al-Mawarith* in inheritance distribution, as follows:

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<sup>17</sup> Sugiyono, *Metode Penelitian Pendidikan (Pendekatan Kualitatif, Kuantitatif, Dan R&D)* (Bandung: Alfabeta, 2019).

Local culture in Temanggung Regency plays a significant role in influencing inheritance distribution practices. Family deliberation traditions are prioritized, and many families feel that adhering to customary practices is more important than following religious law, which may be more complex. As stated by Mr. Sugandhi:

*"We prefer to discuss and deliberate as an extended family because we feel that customs carry more binding authority. Religion is indeed important, but in matters of inheritance, we prioritize mutual agreement."*<sup>18</sup>

In the Temanggung community, although the majority are Muslim, customary values often take precedence over religious teachings when it comes to inheritance distribution. Inheritance is distributed more based on family harmony and places less emphasis on the more specific rules of religion.

Most respondents, particularly the older generation, revealed that they do not have a deep understanding of Islamic inheritance law or *fiqh al – Mawarith*. Many of them only know in general that inheritance should follow religious principles but are unaware of the correct and detailed procedures. As stated by Mr. Abdul Kholid:

*"We know that Islam regulates inheritance, but we do not know how detailed it is or how to apply it. Usually, we just rely on what our parents or older relatives say."*<sup>19</sup>

Similarly, Mr. Mahfud said:

*"If we try to follow religion strictly while the community is not well-informed, it will be difficult. So we use another approach."*<sup>20</sup>

Limited knowledge of *fiqh al – Mawarith* leads to a more pragmatic distribution of inheritance, relying on family agreements rather than the fair and proportional rules prescribed by Islamic law.

Mr. Kholil, a legal advocate, also stated:

*"Most inheritance cases I handle are due to a lack of understanding of inheritance law. So, in fact, the community needs to be educated."*<sup>21</sup>

Economic and social factors also influence inheritance distribution that does not follow *fiqh al – Mawarith*. Some families feel pressured by economic needs and decide to resolve inheritance matters as quickly as possible without adhering to religious rules. In several cases, inheritance is distributed hastily to meet urgent family needs, such as education or healthcare costs. Mr. Muarif explained:

*"Sometimes inheritance distribution is expedited because of urgent needs, for example for children's school fees or hospital expenses. So even if it does not comply with religious rules, we choose to resolve it quickly."*<sup>22</sup>

Thus, inheritance practices that do not follow *fiqh al – Mawarith* are often influenced by economic and social pressures within the family.

#### a) Technical Factors

One significant technical factor hindering the implementation of *fiqh al – Mawarith* is the complexity of dividing non – homogeneous assets, particularly agricultural land, which varies in size, fertility, and location. In *fiqh al – Mawarith*, assets are divided according to specific percentages as prescribed by Islamic law. However, in practice, it is difficult to fairly divide heterogeneous assets.

As Mr. Mahfud explained:

<sup>18</sup> Interview with Mr. Sugandi, Heir, March 1, 2025

<sup>19</sup> Interview with Mr. Sugandi, Heir, March 1, 2025

<sup>20</sup> Interview with Mr. Mahfud, Heir, March 1, 2025

<sup>21</sup> Interview with Mr. Kholil, Heir, March 1, 2025

<sup>22</sup> Interview with Mr. Muarif, Heir, March 1, 2025

"Very often, the inheritance consists only of farmland. But the fields are different: some are near the main road, very fertile, easy to cultivate. Others are at the edge of the village, small, and often flood-prone. According to *fiqh*, we have to calculate so many percent for sons, so many for daughters. But it is impossible to divide the land exactly like that."<sup>23</sup>

Due to these complexities, families tend to ignore *fara'id* and choose pragmatic solutions such as equal division, selling all assets and distributing the proceeds, or relying on family deliberation, even though the outcomes often do not comply with Islamic law.

### Islamic Legal Perspective on Inheritance Distribution without *Fiqh al-Mawarith*

Inheritance distribution is an important aspect of Islamic family law. This study found that in Temanggung Regency, many inheritance practices do not refer to *fiqh al-Mawarith* as stipulated in the Qur'an and Hadith. This indicates a gap between the normative theory of Islamic law and the social reality in the community. Such practices are generally based on custom, family deliberation, or emotional considerations, which may not be fair from a Sharia perspective.

The community in Temanggung Regency tends to rely on family deliberation as the main mechanism for inheritance distribution. This deliberation does not refer to *fiqh al-Mawarith* but is based on family agreements and perceived notions of fairness:

As stated by Mr. Sugandhi:

"Usually, when parents pass away, the family gathers and divides the inheritance according to an agreement. Daughters get less because they join their husbands. Only the sons receive more, especially if they took care of the parents."<sup>24</sup>

This statement reflects a misunderstanding that the obligation of sons to care for parents justifies prioritizing them in inheritance distribution. In Islam, the duty to care for parents is not a criterion for inheritance shares.

On the other hand, there are practices of equally distributing inheritance among all children regardless of gender, under the pretext of maintaining harmony and avoiding conflict

Mr. Abdul Kholid stated:

"Rather than quarrel over inheritance, it's better to divide it equally. Otherwise, the family might become discordant if we follow strict rules."<sup>25</sup>

Although intended to avoid conflict, such practices essentially alter the established law of Allah, indicating that many in the community still do not understand the importance of distributing inheritance according to Sharia.

Even though Islamic religious figures are fairly present in Temanggung Regency, their participation in inheritance distribution is minimal. Many community members do not involve them, considering inheritance a private family matter.

Kiai Rosikhun Zakaria, a local scholar, explained:

"Inheritance is not a matter of custom. The rules are already in the Qur'an. If it is divided not according to Sharia, it means violating Allah's law. Many people still do not understand this."<sup>26</sup>

He added:

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<sup>23</sup> Interview with Mr. Mahfud, Heir, March 1, 2025

<sup>24</sup> Interview with Mr. Sugandi, Heir, March 1, 2025

<sup>25</sup> Interview with Mr. Sugandi, Heir, March 1, 2025

<sup>26</sup> Interview with Kiai Rosikhun Zakaria, Ulama, March 1, 2025

"Actually, there is a solution. It can be divided in two stages. The first stage follows *fiqh al-Mawarith*. Then, it can be distributed according to custom. However, this is not easy because it involves property."<sup>27</sup>

### Impacts of Inheritance Distribution without Fiqh al-Mawarith

This study explored the impacts arising from inheritance distribution that does not adhere to Islamic *fiqh al-Mawarith* in Temanggung Regency. Based on interviews with heirs, community leaders, legal practitioners, and direct observations, several significant impacts were identified on family relations, household economy, and social welfare.

#### a) Impact on Justice for Heirs

Most respondents stated that inheritance in Temanggung Regency is largely based on family deliberation or customary practices, without considering Islamic inheritance law. This directly affects justice for heirs, particularly women.

Mr. Muarif explained:

"Inheritance in our family is mostly based on deliberation. Even though we know that Islam provides clear rules for inheritance, it is often difficult to follow them because of family circumstances and entrenched customs."<sup>28</sup>

According to Mr. Muarif, although there is knowledge of Islamic inheritance rules, implementation is often neglected in favor of long-standing family agreements. He further stated: "Well, what can we do? All the property is distributed equally regardless of gender."<sup>29</sup> This shows that inheritance distribution without reference to *fiqh al-Mawarith* results in unfair treatment of heirs, causing imbalance between sons and daughters.

#### b) Impact on Family Tension and Social Conflict

Inheritance distribution that does not follow *fiqh al-Mawarith* also causes tension within the family. When heirs' rights are not granted fairly, conflicts often arise among family members, sometimes persisting for a long time. Prioritizing family agreement over Islamic rules can trigger dissatisfaction and disputes.

Mr. Muarif noted:

"Sons get more, daughters get less. Although Islam stipulates that a son receives twice the share of a daughter, lack of transparency in distribution often leads to conflict later."<sup>30</sup>

These conflicts often involve other family members as well, creating a tense environment. Some families even bring disputes to court if they feel aggrieved.

Mr. Kholil, a mediator and legal advocate, explained:

"Often families come to me because they cannot resolve inheritance issues internally. This not only damages relationships among family members but also affects the family's reputation in the community."<sup>31</sup>

This shows that inheritance distribution without a clear legal basis, such as *fiqh al-Mawarith*, creates a high potential for internal family conflict, which can damage relationships and even lead to family division.

#### c) Economic Impact on Heirs

Unfair inheritance distribution also affects the economic condition of heirs, both male and female. Favoring certain parties in inheritance leads to unequal wealth

<sup>27</sup> Interview with Kiai Rosikhun Zakaria, Ulama, March 1, 2025

<sup>28</sup> Interview with Mr. Muarif, Heir, March 1, 2025

<sup>29</sup> Interview with Mr. Muarif, Heir, March 1, 2025

<sup>30</sup> Interview with Mr. Muarif, Heir, March 1, 2025

<sup>31</sup> Interview with Mr. Kholil, Advocate, March 1, 2025

distribution, worsening the financial position of those who should rightfully receive their share.

Mr. Abdul Kholid shared:

*"After my father passed away, I struggled because the inheritance I received was unfair in my view. It greatly affected my family's financial condition, and I had to work hard despite difficult circumstances."*<sup>32</sup>

This illustrates how unjust inheritance distribution can lead to economic hardship, even for those entitled to a larger share under Islamic law. If inheritance rights are not properly granted, heirs must rely on other family members or spouses for their livelihood.

#### d) Impact on Family Harmony

Tensions arising from unfair inheritance distribution not only lead to conflicts but also affect family harmony. Unequal division often sparks jealousy, resentment, and animosity among siblings, damaging long – standing relationships.

Mr. Kholil explained:

*"These cases occur frequently. Even in court, there are disputes. I have also been informed of grudges and similar issues afterward."*<sup>33</sup>

The psychological impact of unfair inheritance distribution clearly undermines emotional bonds within the family. Moreover, these tensions can extend to the next generation, resulting in deeper divisions within the extended family.

### **The Impact of Inheritance Distribution Without Applying Fiqh al-Mawarith**

Inheritance distribution that does not comply with Islamic *fiqh al-Mawarith* has significant impacts at the family, social, and economic levels. These impacts can be observed from various perspectives, including injustice toward heirs, family tensions, and the potential for social conflicts within the community.

In inheritance distribution that does not adhere to *fiqh al-Mawarith*, injustice often arises, particularly against women. While *fiqh al-Mawarith* stipulates that a son receives twice the share of a daughter, this is based on the rationale that males have the obligation to provide for the family, whereas females are not burdened with the same responsibility.

However, injustice occurs when inheritance distribution does not follow this principle and decisions are influenced more by subjective factors or unilateral choices of certain family members. For example, in communities that do not understand or correctly follow *fiqh al-Mawarith*, women often receive a smaller portion than their rightful share, or are sometimes completely excluded.

Islam prescribes inheritance distribution to uphold justice for all parties. Injustice in inheritance allocation undermines the social justice framework established by Sharia law.<sup>34</sup>

Furthermore, in Islamic law, unfair inheritance distribution can damage relationships within families and the wider community. Unjust allocation has the potential to cause social jealousy and tensions within the family, ultimately affecting household harmony.

Another significant impact is the emergence of family tensions or conflicts. Inheritance distribution that does not follow *fiqh al-Mawarith* tends to generate

<sup>32</sup> Interview with Mr. Abdul Kholid, Heir, March 1, 2025

<sup>33</sup> Interview with Mr. Kholil, Advocate, March 1, 2025

<sup>34</sup> Zaki Saiful Alam, "Pembagian Warisan Poligami Sirro Masyarakat Desa Sindanglaka Perspektif Gender Dan Maqsid Al-Syaro'ah." (Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2020).

dissatisfaction among heirs, often leading to familial disputes. This dissatisfaction typically arises when family members feel that their rights are not respected or fairly fulfilled.<sup>35</sup>

This conflict not only has the potential to damage family relationships but can also affect the broader social life of the community. For instance, if inheritance issues are not resolved fairly, disadvantaged family members may bring the matter to the legal system, which in turn can tarnish the family's reputation in society.<sup>36</sup>

Furthermore, Wahbah al – Zuhaili, in his work *Al-Fiqh al-Islami wa Adillatuhu*, adds that resolving inheritance matters unjustly, without following Islamic law, can lead to prolonged family tensions. This not only harms familial relationships but also undermines social integrity within the community.<sup>37</sup>

Injustice in inheritance distribution often also causes intergenerational tensions. The older generation may feel they have the right to determine the allocation of inheritance, while the younger generation may feel that they are not receiving a fair share according to Islamic provisions.

In addition to the impact on family relationships, inheritance distribution that does not follow *fiqh al-Mawarith* also has the potential to create broader social and economic problems.<sup>38</sup> In many cases, women who do not receive their rightful share of inheritance become dependent on their husbands or other family members, placing them in economically vulnerable positions.<sup>39</sup>

Injustice in inheritance distribution, particularly against women, can lead to unequal wealth distribution. This creates unhealthy dependence for family members who are economically *disadvantaged*.<sup>40</sup>

For children or other family members who feel they have not received their fair share, this can also affect their motivation to participate in family social and economic activities. They may feel undervalued or marginalized, which can reduce their willingness to cooperate and contribute to the family's overall welfare.<sup>41</sup>

Another economic impact is the potential for financial hardship in families where heirs feel their rights have not been fulfilled. For example, if a daughter does not receive a proper share, she may have to rely on other family members or her husband to meet her needs, which ultimately affects the overall economic well – being of the family.<sup>42</sup>

Inheritance distribution that does not follow *fiqh* rules can affect the legitimacy or permissibility of property ownership. For example, if an heir (*muwāriṭh*) owns a rice field that is ready for harvest, and the proceeds are not distributed according to *fiqh* law, this can have serious implications in Islamic law, rendering the property illegitimate or invalid.<sup>43</sup>

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<sup>35</sup> Abidin, "Korelasi Antara Islam Dan Ekonomi."

<sup>36</sup> Basri, "Hukum Waris Islam (Fara'id) Dan Penerapannya Dalam Masyarakat Islam."

<sup>37</sup> Wahbah, *Fiqh Islam Wa Adillatuhu*.

<sup>38</sup> Eric Eric, "Hubungan Antara Hukum Islam Dan Hukum Adat Dalam Pembagian Warisan Di Dalam Masyarakat Minangkabau," *Jurnal Muara Ilmu Sosial, Humaniora, Dan Seni* 3, no. 1 (2019): 61 – 70.

<sup>39</sup> Leleang and Zubair, "Problematika Dalam Penerapan Hukum Waris Islam."

<sup>40</sup> Leleang and Zubair.

<sup>41</sup> Gisca Nur Assyafira, "Waris Berdasarkan Hukum Islam Di Indonesia," *Al-Mashlahah Jurnal Hukum Islam Dan Pranata Sosial* 8, no. 1 (2020): 68 – 81.

<sup>42</sup> Saputri, "Pemahaman Masyarakat Tentang Penerapan Pembagian Harta Warisan Menurut Hukum Waris Islam."

<sup>43</sup> Muhammad Iqbal, Hamzah Kamma, and Fasiha Fasiha, "Eksplorasi Tradisi Pembagian Tanah Mana'Pada Masyarakat Kabupaten Luwu; Perspektif Hukum Islam Dan Hukum Positif," *Al-Mada: Jurnal Agama, Sosial, Dan Budaya* 7, no. 2 (2024): 403 – 19.

## DISCUSSION

Local culture plays a very significant role in inheritance distribution in Temanggung Regency. Although the majority of the population is Muslim, customary values often exert a stronger influence on the inheritance distribution process.<sup>44</sup> As written by Abdul Rosyid et al. in their article "Customary Law and Inheritance in the Islamic Perspective," in many regions customary inheritance practices remain a stronger norm than religious law. Even though there is an understanding that inheritance in Islam should be distributed according to the provisions of *fiqh al-Mawarith*, customary traditions are more widely accepted as the basis for inheritance distribution.<sup>45</sup>

Customary practices that prioritize family deliberation and consensus can lead to unfair inheritance distribution.<sup>46</sup> This often disadvantages certain parties, such as women or children, who should receive their rightful shares in accordance with Islamic law.

The lack of knowledge regarding *fiqh al-Mawarith* is another significant factor. As explained by Al-Qaradawi in his book *Fiqh Maqasid al-Shari'ah*, one of the main causes of injustice in inheritance distribution is the community's lack of understanding of the provisions of Islamic inheritance law.<sup>47</sup> Inheritance distribution that does not conform to *fiqh al-Mawarith* can lead to inequality among heirs, particularly with regard to the rights of women and children.<sup>48</sup>

The lack of in-depth religious education on *fiqh al-Mawarith* in Temanggung Regency can lead to inheritance distribution practices that do not comply with Sharia provisions and may even disadvantage those who are entitled to greater rights, such as daughters.<sup>49</sup>

Economic pressure and urgent social needs are also major factors leading to inheritance distribution practices that do not adhere to Islamic law. As revealed by several respondents, inheritance is often distributed hastily due to pressing economic conditions, which can result in social injustice.<sup>50</sup> As emphasized by Akmal Zainal in his discussion on the correlation between Islam and economics, economic limitations are frequently the reason why inheritance distribution is carried out in ways that are inconsistent with Islamic law. When families feel pressured by economic needs, they often choose shortcuts to resolve inheritance issues as quickly as possible.<sup>51</sup>

In this context, although rapid inheritance distribution without clear regulations may help address immediate economic problems, it also has the potential to undermine the structure of justice envisioned in Islamic law.

Based on the findings obtained through interviews, one of the main reasons for the non-application of *fiqh al-Mawarith* in the distribution of inheritance is the technical

<sup>44</sup> Hazar Kusmayanti and Lisa Krisnayanti, "Hak Dan Kedudukan Cucu Sebagai Ahli Waris Pengganti Dalam Sistem Pembagian Waris Ditinjau Dari Hukum Waris Islam Dan Kompilasi Hukum Islam," *Jurnal Ilmiah Islam Futura* 19, no. 1 (2019): 68–85.

<sup>45</sup> Agus Wantaka, Abdul Rosyid, and Eka Sakti Habibullah, "Pembagian Warisan Dalam Perspektif Hukum Islam Dan Hukum Adat Jawa (Studi Komparasi)," *Prosa AS: Prosiding Al Hidayah Ahwal Asy-Syakhshiyah* 1, no. 1 (2019): 13–33.

<sup>46</sup> Habib Ismail and Agus Hermanto, "Analisis Hak Waris Istri Akibat Murtad Perspektif Hukum Waris Islam Dan Gender," *At-Tahdzib: Jurnal Studi Islam Dan Muamalah* 8, no. 1 (2020): 121–43.

<sup>47</sup> Sri Hariati, "Penerapan Hukum Waris Islam Pasca Berlakunya Kompilasi Hukum Islam Di Indonesia," *Jurnal Sosial Ekonomi Dan Humaniora* 10, no. 3 (2024): 528–34.

<sup>48</sup> Yusuf Al-Qaradhawi, *Fiqh Maqashid Syariah* (Jakarta: Pustaka al-Kautsar, 2021).

<sup>49</sup> Ernik Ernik, Andi Sukmawati Assaad, and Helmi Kamal, "Hukum Waris Islam Dan Pluralisme Hukum," *MADDIKA: Journal of Islamic Family Law* 4, no. 1 (2023): 38–47.

<sup>50</sup> Rafika Kurnia Saputri, "Pemahaman Masyarakat Tentang Penerapan Pembagian Harta Warisan Menurut Hukum Waris Islam," *Journal of Comprehensive Islamic Studies* 2, no. 2 (2023): 205–20.

<sup>51</sup> Akmal Zainal Abidin, "Korelasi Antara Islam Dan Ekonomi," *Jurnal Penelitian* 9, no. 1 (2015).

complexity related to the nature and condition of the inherited assets themselves. This issue is most evident in cases where the inheritance consists of rice fields or agricultural land.<sup>52</sup>

Agricultural land that becomes the object of inheritance often has varying characteristics, such as unequal sizes, non – uniform soil quality (fertile versus infertile), different locations (strategic versus remote), and conditions that make physical division impractical without diminishing its utility or productivity.<sup>53</sup>

While *fiqh al – Mawarith* regulates the proportion of inheritance shares (for example, a 2:1 ratio between male and female children), it does not provide detailed technical guidance for dividing non – homogeneous assets. For instance, when a son is entitled to two – thirds and a daughter to one – third of the estate, it is difficult to physically divide agricultural land according to these proportions without reducing its economic value or functional use.<sup>54</sup> This is what practically hinders the implementation of *fiqh al – Mawarith*.

In Islamic law, inheritance distribution is clearly regulated in the Qur'an and the Hadith, with provisions that specify who is entitled to inherit and the proportion of shares allocated to each heir. This system is designed to establish justice among family members and to ensure that the rights of heirs are protected. In this section, an in – depth analysis will be conducted of the Islamic legal perspective on inheritance distribution that does not apply *fiqh al-Mawarith* in Temanggung Regency, based on the findings of this study.

In Islamic law, inheritance is regulated in the Qur'an, particularly in Surah An – Nisa' (4:7 – 14), which provides detailed guidance on the distribution of inheritance. This system aims to protect the rights of heirs, both male and female, although in certain circumstances males receive a larger share due to their greater financial responsibilities.<sup>55</sup>

For example, in Surah An – Nisa' (4:11), Allah سبحانه وتعالى explains the distribution of inheritance for sons and daughters, as well as for husbands and wives. These provisions are further elaborated in the Hadiths, which clarify the specific shares allocated to each heir, emphasizing that Allah has determined the inheritance rights of every entitled person, both male and female. Therefore, these rights should not be reduced or infringed upon.<sup>56</sup>

Islamic law clearly stipulates that a son receives twice the share of a daughter (QS. An – Nisa' 4:11), as sons bear financial responsibilities toward their families, including providing maintenance for their wives and children.

In certain cases, Wahbah al – Zuhayli acknowledges that there is room for family deliberation (*musyawarah*) in the distribution of inheritance, provided that such decisions do not contradict the principles of justice taught in Islam. In this context, family deliberation may be used to reach wiser decisions that are more appropriate to the specific circumstances of the family. However, such deliberation must still be carried out while respecting individual rights in accordance with the provisions of *fiqh al – Mawarith*.<sup>57</sup>

<sup>52</sup> Naili Fadhilah, "Pembaruan Hukum Waris Islam: Wasiat Wajibah Mesir Dan Relevansinya Dengan Konsep Waris Pengganti Indonesia," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 3, no. 1 (2021): 36 – 47.

<sup>53</sup> Rahmi Murniwati, "Sistem Pewarisan Harta Pusako Di Minangkabau Ditinjau Dari Hukum Waris Islam," *UNES Journal of Swara Justisia* 7, no. 1 (2023): 103 – 11.

<sup>54</sup> Achmad Alga Fiqi Ibnu Qoyim, "Tinjauan Fiqh Mawaris Terhadap Pembagian Waris Adat Sistem Bilateral Individual (Studi Kasus Di Desa Lubuk Rukam Kecamatan Peninjauan Kabupaten Ogan Komering Ulu)" (UIN Raden Fatah, 2017).

<sup>55</sup> Hikmatullah Djamud, Naf'an Tarihoran, and Abduh Fauzan, "Keadilan Hukum Waris Islam Versus Hukum Waris Burgerlijk Wetbook Di Indonesia (Analisis Perbandingan)," *Falah: Jurnal Hukum Ekonomi Syariah* 6, no. 1 (2024): 1 – 14.

<sup>56</sup> Ahmad Bisyril Syakur, *Panduan Lengkap Mudah Memahami Hukum Waris Islam: Dilengkapi Hibah & Wasiat* (Bogor: VisiMedia, 2015).

<sup>57</sup> Az Zuhaili Wahbah, *Fiqh Islam Wa Adillatuhu* (Jakarta: Gema Insani, 2011).

According to Wahbah al – Zuhayli, although there is room for deliberation or family agreement in certain matters, this does not mean that the rules governing inheritance distribution in Islamic jurisprudence can simply be disregarded. If such deliberation leads to injustice or harms one of the parties, it becomes a matter that must be resolved by referring to higher principles of Islamic law.<sup>58</sup>

*Fiqh al-Mawarith* is a branch of Islamic jurisprudence that specifically addresses the rules for distributing inheritance according to Islamic teachings. In Islam, inheritance regulations are explained in detail, covering the distribution to heirs such as children, parents, spouses, siblings, and others. This distribution aims to uphold justice and prevent inequity among heirs.

According to Zaini, inheritance in Islam is *fard 'ain* (obligatory for every Muslim) and cannot be disputed or altered. Inheritance distribution conducted in ways that do not conform to *fiqh al-Mawarith* can be considered a neglect of Allah's law and may undermine the structure of justice within the family.<sup>59</sup>

In practice, inheritance distribution without following *fiqh al-Mawarith*, as observed in Temanggung Regency, carries the risk of creating injustice, particularly for males who often receive the same share as females despite their rights being clearly stipulated in the Qur'an.

Al – Zuhayli also notes in several of his works on tafsir and jurisprudence that in certain conditions—such as disagreements within the family, or when strict application of Islamic law is not feasible—people may seek alternative, more practical solutions. This, however, does not imply that inheritance distribution inconsistent with Islamic jurisprudence is permissible; rather, he emphasizes the importance of resolving conflicts fairly through deliberation, without disregarding Islamic law as a whole.

Although in some cases family deliberation may serve as a means to resolve inheritance distribution issues, any decisions must still uphold the principles of justice prescribed in *fiqh al-Mawarith*.<sup>60</sup>

Wahbah al – Zuhayli emphasizes the importance of implementing *fiqh al-Mawarith* accurately and cautions against mixing Sharia law with customary practices that are inconsistent with the principles of Islamic justice. Nevertheless, he does not rule out the possibility of finding solutions in certain circumstances to meet practical community needs, provided that such solutions always remain grounded in the fundamental principles of Islamic law.

Inheritance distribution that does not adhere to *fiqh al-Mawarith* can lead to injustices that disadvantage certain parties, particularly males. In several cases observed in Temanggung, sons often received the same share as daughters, even though according to *fiqh al-Mawarith*, sons are entitled to a larger portion due to their specific responsibility to provide for the family.

This injustice becomes more evident when inheritance is distributed without transparency and solely based on family deliberation (*musyawarah*), which may be influenced more by emotional closeness or family power dynamics than by fair and objective considerations. For example, certain family members may receive a disproportionately larger share if there is insufficient oversight or understanding of the rules of *fiqh al-Mawarith*.

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<sup>58</sup> Wahbah.

<sup>59</sup> Zaini, "Tradisi Pembagian Harta Warisan Pada Masyarakat Kota Subulussalam Di Kecamatan Penanggalan Perspektif Maqashid Syariah" (UIN Sumatera Utara, 2024).

<sup>60</sup> Wahbah, *Fiqh Islam Wa Adillatuhu*.

This aligns with previous research indicating that injustice in inheritance distribution—such as reducing the rights of heirs for emotional or familial reasons—violates the principles of justice prescribed in *fiqh al-Mawarith*.<sup>61</sup>

In a more practical context, Al-Zuhayli does not directly permit inheritance distribution without following *fiqh al-Mawarith*. However, he suggests that in certain cases, where precise distribution according to Islamic law is difficult (e.g., due to disagreements or lack of knowledge), a possible solution is to educate the family about inheritance rights in Islam and seek a resolution in a wiser and fairer manner, without violating the fundamental principles of *fiqh al-Mawarith*.<sup>62</sup>

The best solution for inheritance distribution that does not comply with Islamic law is to provide better education to the community regarding inheritance rules in *fiqh al-Mawarith*, as well as to adopt family deliberation (*musyawarah*) approaches that prioritize the principle of justice.<sup>63</sup>

In Islamic law, every heir has rights that must be allocated fairly and proportionally. Inheritance distribution carried out without following the rules of *fiqh al-Mawarith* can result in injustice.

For example, Surah An-Nisa' explains that a male receives twice the share of a female, as males have the obligation to provide maintenance for the family, whereas females do not. However, despite the difference in shares between males and females, the distribution must still be carried out according to the principle of justice and without neglecting the rights of others, such as spouses or parents, in accordance with Islamic provisions. Fair distribution in Islamic *fiqh al-Mawarith* aims to protect the rights of heirs and ensure their economic well-being, without causing harm to any party.<sup>64</sup>

## CONCLUSION

Based on the findings presented, it can be concluded that the distribution of inheritance in Temanggung Regency, without applying *fiqh al-mawarith*, is influenced by several interrelated factors. The first factor is the lack of knowledge or understanding among the community regarding Islamic inheritance law (*fiqh al-mawarith*). Many people in the community tend to prefer traditional methods where inheritance is divided through family deliberations or customary practices, without considering the provisions of *fiqh al-mawarith*. This lack of awareness leads to an absence of structured legal principles in inheritance distribution. The second factor is the strong influence of local customs and traditions, which hold significant value in the community. Customary inheritance distribution, which does not always comply with Islamic law, is often perceived as simpler and more harmonious, especially when it comes to maintaining peace within the family. These traditional methods are considered more practical in some cases, even though they may not align with the principles of justice and equity laid out in Islamic law.

Islamic law, through *fiqh al-mawarith*, has clearly regulated the fair distribution of inheritance, ensuring that both male and female heirs receive their rightful share. This system is designed to promote justice and balance, ensuring that each individual receives what is due to them according to Islamic principles. However, despite these provisions,

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<sup>61</sup> Hisam Ahyani et al., "Prinsip – Prinsip Keadilan Berbasis Ramah Gender (Maslahah) Dalam Pembagian Warisan Di Indonesia," *Al-Mawarid Jurnal Syariah Dan Hukum (JSYH)* 5, no. 1 (2023): 73 – 100.

<sup>62</sup> Wahbah, *Fiqh Islam Wa Adillatuhu*.

<sup>63</sup> Wahbah.

<sup>64</sup> Budi Tama Siahaan and Faisar Ananda, "Komparasi Pembagian Warisan Antara Ahli Waris Laki – Laki Dan Perempuan Di Luar Pengadilan Dalam Perspektif Hukum Islam," *Al-Qolamuna: Journal Komunikasi Dan Penyiaran Islam* 4, no. 1 (2025): 289 – 306.

many families do not follow the legal guidelines of fiqh al – mawarith. Instead, they rely on family discussions or customary practices to divide the inheritance. This deviation from Islamic law can lead to significant issues within the family structure. When inheritance is not distributed equitably, it often causes internal conflicts, with emotional tension rising between siblings or relatives. Disputes over perceived unfairness in the inheritance process can create long – lasting divisions within the family, which may even escalate to legal battles. As a result, it is essential for the community in Temanggung Regency to gain a better understanding of and adhere to Islamic inheritance law. By doing so, they can ensure that inheritance is distributed fairly, which aligns with both religious teachings and societal harmony, thereby preventing unnecessary conflicts and preserving family relationships.

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