



SIGAR SEMONGKO AND GILIR WARIS: THE CONTROVERSY OF CUSTOMARY LAW AND ISLAMIC LAW IN THE INHERITANCE SYSTEM

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Abstrak: Penelitian ini bertujuan untuk menjelaskan adanya perbedaan antara pembagian hak waris masyarakat Jember dan Hukum Islam, kemudian melihat kontekstualisasi praktik tersebut dengan hukum waris Islam dengan melandaskan pada aspek *maslahah* dan *'urf* (tradisi). Penelitian ini berdasarkan paradigma kualitatif, di mana data yang terkumpul melalui teknik observasi, wawancara dan studi literatur serta menggunakan analisis deskriptif. Hasil penelitian menunjukkan bahwa, masyarakat Jember membagi warisan dalam jumlah yang sama (*sigar semongko*), ada juga sistem giliran ahli waris dalam memanfaatkan aset/harta warisan. Hal ini berbeda dengan ketentuan hukum Islam yang mengatur sistem 2:1 bagi anak laki-laki dan perempuan. Ditinjau dari perspektif Islam, hal ini mengandung *maslahah* (manfaat) bagi ahli waris karena meminimalisir adanya perpecahan antara saudara dengan mendasarkan pada kaidah kemudharatan harus dihindari. Sistem tersebut didasarkan pada asas kerukunan, dan keadilan berimbang (anak laki-laki dan perempuan mempunyai hak yang sama). Ini sudah menjadi adat dan disepakati oleh para tokoh agama dan masyarakat sehingga dapat menjadi hukum.

Kata kunci: Hukum waris Islam dan adat; sigar semongko; gilir ahli waris

Abstract: This study aims to explain the differences between the inheritance rights of the Jember community and Islamic law, then look at the contextualization of this practice with Islamic inheritance law based on *maṣlahah* and *'urf* (tradition). This research is based on a qualitative paradigm, with observation techniques, interviews and literature studies, and descriptive analysis. Results of the study show that the people of Jember share the same inheritance amount (*sigar semongo*). There is also a turn system for heirs to utilize the benefits of assets. This differs from the provisions of Islamic law, which regulate the 2:1 system for boys and girls. Viewed from the Islamic perspective, this contains *maṣlahah* for heirs because it minimizes division between siblings based on the principle of disadvantage that should be avoided. The system is based on harmony and balanced justice (Boys and girls have equal rights). It has become customary and agreed upon by religious and community leaders so that it can become law.

Keywords: Islamic and customary law of inheritance; *sigar semongko*; *gilir ahli waris*

Introduction

Islamic inheritance law has been considered rigid, doctrinal and undeveloped. It's not uncommon for this to reap controversy among Muslims. Inheritance verses are considered to need interpretation rather than being understood contextually. Even though Islam provides clear guidelines regarding the distribution of assets, such practices always benefit certain heirs more than others (Sartika, 2017). Various practices have emerged in Muslim societies along with efforts to share assets more fairly. Provisions regarding a flexible portion of the heir (not regarding an absolute share) by prioritizing blood relations in customary law are considered more adaptive to the circumstances of the heir when compared to principles in Islamic law (Fikri, 2018).

The most prominent setting in Islamic inheritance is the 2:1 ratio between sons and daughters, as stipulated in QS al-Nisā': 11 and KHI Article 176, which reads: "*If there is only one daughter, she gets 1/2 if two or more people they get 2/3 together, and if the girl is with the boy, then the son's share is two to one with girls...*". This rule against practices that have been taking place in Javanese society, especially in the Jember region.

Islamic law, especially regarding inheritance, is not strict. To uphold justice, some Muslim communities in Jember take advantage of local wisdom by using an inheritance system called *sigar simongko* and *gilir ahli waris*. In practice, the two systems don't reflect Islamic practice. Where inheritance is divided equally for men and women (*sigar simongko*) or managed alternately without being wholly owned (*gilir ahli waris*), it doesn't follow the principle of inheritance in Islam.

In this article, the author seeks to complement the customary inheritance law literature by describing inheritance practices in the Muslim community Jember, looking at the points of contact or controversy with Islamic law, then contextualizing it with Islamic law from the *maṣlahah* and *'urf*. In addition, the author also tries to explore the social values and wisdom contained in the practice of inheritance.

Method

This study uses a qualitative approach with observation, interviews, and a literature review. Researchers observed the distribution of assets between heirs, including those involving the ulama. In-depth

interviews were conducted with seven informants directly or indirectly involved in the inheritance process. Data collected through literature review is emphasized in simplification, categorization, and reduction, thus enabling the researcher to focus on data that answers the research questions.

Division of Inheritance in Islamic Law and Javanese Custom

There are three inheritance matters (Idris & Aslikha, 2019), including the existence of an heir, the heirs themselves, and the inherited property. The formulation of Islamic inheritance law in fiqh is based on the Quran and hadith. In the Quran, the law of inheritance is listed in QS al-Nisā' (4): 7, 11, 12, 33, 174 and in QS al-Anfāl (8): 75 (Husien & Khisni, 2017). The verse is obvious and firm, in which the Quran uses expressions *yushibukumullah* (be bequeathed by God), *farīḍatan minallāha* (obligation from God), *waṣīyatan minallāh* (God's will), and *hudūdallah* (a provision from Allah).

According to Islamic law, groups entitled to be heirs are sons, daughters, husbands, wives, mothers, fathers, brothers, sisters, daughters, grandparents, grandsons and granddaughters. As for the portion received by the heirs, the priests of the schools of thought agree on the portion specified in the Quran, namely half (*nisf*), quarter (*rub'*), one-eighth (*thumun*), two-third (*thuluthun*), one-third (*thulus*) and one-sixth (*sudus*) (Muhammad, 2010). Each of these heirs (children) divisions has a ratio (2:1) between male and female heirs.

This is as in QS al-Nisā': 7, "*For men, there is a right to a share in the inheritance of their mother/father and relatives, as well as for women, whether in small or large amounts according to a predetermined portion*". Also, in QS al-Nisā': 11, "*Allah prescribes for you regarding (the distribution of inheritance/wealth) for children your children, that is, the share of a son is equal to that of two daughters if the children are all girls more than two, then they get two-thirds of the inheritance left, and if it is only a girl, then she gets half the property.*"

Distribution of inheritance itself must be based on the following principles: First, *ijbārī*, which means the transfer of assets occurs after the heir dies, applies based on the provisions of Allah Swt with the number of assets determined for each part (Mutiah, 2016). Second,

bilateral means the right to receive inheritance from both parties (M. D. Ali, 2011). Third, individual means that inheritance can be divided among heirs to be owned individually (Mutiah, 2016). Fourth, balanced justice can be interpreted as a balance between rights and obligations and between what is obtained and its needs and uses (Mutiah, 2016). Fifth is the principle of mere death (Mutiah, 2016).

In addition to Islamic inheritance law, the distribution is usually based on customary law. That contains provisions regarding the system and principles of inheritance law, regarding inheritance, heirs and heirs and how the inheritance is transferred to control and ownership from the heir to the heir (Adikusuma, 2015). In Javanese customary terms, "Inheritance" means passing family property on to their offspring (sons and daughters). In this case, there is no difference in share/amount between boys and girls (Wantaka et al., 2019).

Customary inheritance has characteristics that distinguish it from Islamic inheritance law, including the basis for distribution is equal rights and harmony between siblings, there is no compulsion to share inheritance after the parents die immediately, inheritance can be divided without waiting for the heir to die, and inheritance is not an asset of a single inheritance. Still, attention must be paid to the nature/type of origin and legal position of items in the inheritance (Hajati, 2018). Javanese society adheres to a parental (bilateral) system that draws lineage from father and mother. Thus, heirs entitled to inheritance are sons and daughters with the same portion or are entitled to equal treatment of their parents' inheritance (Astutik, 2019). In addition, special features stand out in Javanese customary inheritance, namely by applying the following two principles (Astutik, 2019): Individual principle (each heir has the right to get a share, to control and has their right), and the basis of balance. This balance doesn't mean all children (boys and girls) must get an equal share. There are times when it is considered based on the needs and responsibilities of each child. Therefore, some apply a 2:1 system like inheritance referred to in Islamic law, some divide equally 1:1. some give more shares to the youngest child or children who stay longer and take care of the heirs in their old age (Astutik, 2019).

An Overview of Islamic Inheritance Law and Its Position in Civil Law

Inheritance law relates to the property transfer between the deceased (heir) and one or more heirs (Taqiyuddin & Luthfi Inheritance, 2023). It is an essential topic of discussion because it involves justice and legal benefits. At this stage, inheritance rights are detailed shares of the heirs and the amount received by them (Zouaoui & Rezeg, 2021). In Indonesia, inheritance law is divided into three broad categories: KUH Perdata, customary inheritance law, and KHI (Eric, 2019). According to Islamic inheritance law, all inheritance left by the heir can be inherited as long as the property is free from religion (will) and worldly obligations (which means it should be free from debt and others that caused issues) (Ahmad Razimi, 2016).

Islamic law includes inheritance law that originates from religious texts (Quran and Hadith), which provides guidelines for all aspects of Muslim life, as well as the consensus reached by Islamic thinkers and scholars (Zouaoui & Rezeg, 2021). However, there is still controversy over the application of Islamic inheritance law. For example, there can be seen differences of opinion regarding provisions on the portion of inheritance for men and women, where some argue that the distribution of inheritance for men and women can get a 1:1 portion because 2:1 is considered unfair. Division 2:1 is considered legally relevant to the past but not to the present and the future, considering that husband and wife have the same responsibility towards the family.

Inheritance law is a component of civil and family law (Kusmayanti and Krisnayanti, 2019). The law of inheritance plays an important role in determining and reflecting society's familial system (Zaelani, 2020). Inheritance law oversees the transfer of a deceased person's wealth and the repercussions for the heirs (Aulia and Suparsetyani, 2019). The presence of a deceased person (the decedent), surviving individuals as the decedent's descendants (heirs), and the presence of a particular amount of wealth left by the decedent (inheritance) are the three requirements for inheritance to occur (Sagala, 2018). Kinship or lineage, marital ties, and al-wala' (affiliation) are reasons someone receives an inheritance. Meanwhile, impediments to inheritance include slavery, murder, differences in religion, and differences in nationality (Ismail and Hermanto, 2020).

In Islam, inheritance law refers to the legal procedures that control the disposition of an individual's wealth after death (Musyafa'ah, 2017).

The inheritance consists of various assets and all rights from the deceased in a clean state, which means that the inheritance acquired by the heirs is a sum of assets and all rights after the deceased's debts and other payments resulting from their death have been deducted (Nasution, 2018). Islamic inheritance law is based on various verses of the Quran and hadiths of the Prophet, which include the Prophet's sayings, actions, and specific matters (Affandy, 2020). Meanwhile, Islamic law is composed of several principles, including the testament principle (*ijbari*), the bilateral principle (mutual relationship between the deceased and the heirs), the individual principle (acknowledgement of the heirs' rights), the balanced justice principle, and the consequence of death principle (Haniru, 2014). These principles serve as the foundation for a fair and equitable inheritance distribution.

Islamic inheritance law often clashes with local laws (Agustin et al., 2022). In many cases, inheritance laws in Indonesia do not implement Islamic inheritance law due to its perceived complexity and inefficiency. Some communities avoid traditional inheritance by gifting assets (*hibah* and *wasiyah*) while the owner is still alive, which later becomes part of the inheritance (Fikri & Wahidin, 2017; Muqtada, 2015)). In other places, such as the Bugis Luwu Sulawesi community, inheritance between men and women is equal, indicating a pluralistic hereditary system with Islamic and traditional elements (Assaad et al., 2022). In Kalimantan, the customary inheritance is a blend of Malay customs, Islamic law, and local traditions. In Kalimantan, the term for inheritance is marked by the customs of *bedamai* and *tuan guru*, acting as mediators in the inheritance process (Maskuri & Aufa, 2022). In Java, there are two terms: *sigar semangko* (equal distribution of rights between men and women) and *sagendhong sapikul* (men receive double the share compared to women) (Sudaryanto, 2010). The clashes and compromises between Islamic inheritance systems and customary laws demonstrate the diversity and plurality of practices regarding inheritance laws in Indonesian society.

As is known, justice is one of the doctrinal principles that implies that there must be a balance between rights obtained and inherited assets with obligations and burdens of life that must be borne/carried out among heirs. The meaning of justice is not measured by the similarity of levels between heirs, male or female, but must be determined based

on the size of burden or responsibility carried. Therefore, the 2:1 portion is often questioned, sued, or blasphemed by Muslims.

Although the Quran and hadith have provided clear guidelines for dividing assets among heirs, various understandings and traditions have emerged among Muslims in Java. They have used *ijtihad* to develop legacy systems. This refers to local religious figures rather than classical exegetical texts (*Knowledge of Faraidh*) or KHI. This was also reinforced by several religious court decisions that decided on inheritance disputes, such as Jember Religious Court Decision No.1050/PDT.G/2016/PA.Jr, No.356/Pdt.P/2021/PA.Jr, and No.1288/pdt.P/2022/PA.Jr shows that the judge just gave a legal position based on the agreement reached by the heirs, and in all three cases, it was agreed that property would be divided equally between the heirs (boy or girl).

The Concept of *Sigar Semongko* and *Gilir Ahli Waris* in The Customs of Jember Community

Most Javanese people divide the inheritance equally among sons and daughters. Apparently, in this era, men and women are almost responsible for their families and take the same burden in their social lives. Therefore, there is an assumption that all children will build a family that requires a lot of capital. This equal share is intended for household capital. This system is considered fair because both wife and husband contribute or help build the economy for their family. The method is usually called *sigar semongko*. This is a traditional inheritance that has always existed in Jember society. *Sigar semongko*, is just a name that refers to the practice of dividing assets equally. Men and women need an equal share to support their families and must work together to fulfill it. This is a community habit in Indonesia, especially in Jember (Amin, 2022).

In this system, both men and women are considered to contribute financially to their families. This system offers a more humanitarian approach to dividing assets between family members, especially when they are not economically independent (Sofyan, 2022). In Jember, the known term *gilir ahli waris*, the inheritance system used for assets, cannot be divided like rice fields. Land or rice fields are rented to other people or worked on in turns, the details of which are decided at each family meeting year (Arifin, 2022).

Regarding the transfer of assets from heirs to heirs, it has been regulated in Islam, among others in QS al-Nisā': 11. Male heirs are entitled to a double share of the female heirs (assets are divided in a ratio of 2:1). The provisions of this holy book are recognized by scholars from the four significant imams of fiqh, including Hanafi, Maliki, Shafi'i, and Hambali. Some of these arguments are recognized by the majority of scholar in Indonesia, especially the need to maintain a balance between the rights and obligations of male and female heirs (U. Ali & Ridho, 2021). It is assumed that the male heir (son) is responsible for his family and guarantees the fulfilment of his material and immaterial needs (Ikrom, 2015). Meanwhile, female heirs are not responsible for supporting their families financially.

This two-to-one ratio has been agreed upon in Islamic Jurisprudence. However, it is not universally recognized by Javanese Muslims and religious leaders. Like what is practiced by most religious leaders in Jember Abdul (2022), one religious figure belonging to the Muhammadiyah sect (read: kiai) considered the scriptures final and absolute. However, to promote justice and prosperity, these verses are often interpreted in ways that claim to reflect their substance. One way is to divide assets evenly.

In practice, the family house (in Jember it is called "*Cepuren*") is given to the heir who takes care of his parents (Haris, 2022). Then, the inheritance is divided equally after the heir dies based on the results of the family discussions. Rodhi, (2022), a Nahdlatul Ulama religious figure, expressed something similar, expressing his opinion that the distribution of assets is equal between male and female heirs, after deliberation within the family, can be very beneficial.

This shows that even though the scholars have acknowledged that scriptures provide a clear and final explanation (*qat'ī*), they haven't implemented it in their own families; instead, they prioritize equality and fairness. Due to the varying application of the provisions of the scriptures by religious leaders, society also does not comply with the provisions of the scriptures. The guidance given by *kyai* is believed to be the correct and most appropriate guide to be implemented. For this reason, to maintain harmony and family unity, Jember society relies on opinions *kyai* in the distribution process legacy (Rokhim, 2022).

From several explanations of informants above, it can be said that there is division that the inheritance of Muslims in Jember no longer

adheres to the provisions of the holy book. However, it places greater emphasis on balanced justice between men and women and the results of deliberation. Also, inheritance distribution is based on each other's needs. Family members who have financial needs can receive a larger share once agreed upon previously (Ridho, 2022).

From the statements of several informants above, it can be concluded that most of the people of Jember share an equal amount of inheritance (*sigar semongko*) for boys and girls. Some apply *gilir ahli waris* in the management of productive assets. However, not a few also share their wealth flexibly based on the economic needs of each member. Such a system has become a family tradition and is considered to ensure family well-being. In addition, most of the people of Jember apply for inheritance grants, namely the division of inheritance agreed upon when the heir is still alive based on a mutual agreement with heirs. In addition to considering the individual needs of the heirs, the inheritance system must also consider the use of the family's house and other assets after the parents' death. In practice, all of these systems are believed to guarantee justice and balance among heirs and prevent hostilities in the future.

Contextualization of Inheritance Law and Interpretation of Social Values

In general, the inheritance system in Jember society is summarized in the table below and the controversy with Islamic law:

Table 1. Inheritance Practices Among the Community of Jember

By	Asset Distribution	Deviation
<i>Sigar Semongko</i>	Property is divided equally between male and female heirs (1:1)	According to QS al-Nisā': 11, assets must be divided between sons and daughters in a ratio of 2:1. As well as the principle of balanced justice in an Islamic perspective.
<i>Gilir Ahli Waris</i>	The productive assets strategy is not divided but controlled by different heirs each year.	Violating the individual basis in law Islamic inheritance, where all property is owned and controlled by individual heirs.

By	Asset Distribution	Deviation
Inheritance Grant	The property is transferred to the child (candidate heir) as long as the heir remains alive.	Violating the basic principle of inheritance, like property is only divided after death; this is regulated in verses 11 and 12 of QS al-Nisā' and the principle of Ijbari.

Source: Compiled by author, 2022

From the above explanation, there's a controversy over applying customary inheritance with Islamic law in Jember society. However, this inheritance system has been running for a long time and is justified by religious leaders in the region because it is believed to be useful. This means that the 2:1 concept in dividing inheritance of sons and daughters cannot always be applied in one region, bearing in mind different cultures. For this reason, in-depth *ijtihad* is needed to judge inheritance issues, especially regarding the inheritance verses regulated in the Quran.

Many contemporary scholars have started to reinterpret verses of scriptures related to inheritance, especially Surah al-Nisā: 11 (which discusses gender and inheritance). This interpretation departs from the argument that the meaning of the Quran is produced through dialogue between God, humankind, and social reality (Wahidi, 2016). These three elements are interrelated and cannot be avoided, so social reality must be considered when interpreting scriptures; according to them, a truly literal understanding is not always the most appropriate. These should be seen as guidelines setting strict maximum and minimum limits. Inheritance must be divided flexibly as long as the limits set by the Quran are observed.

Views like this are commonplace among Javanese Muslims, including contemporary scholars. The data shows that some scholars have interpreted QS al-Nisā' in a way that allows flexibility.

In addition to the three scholars above, several other contemporary scholars, such as Abū Zayd argue that QS al-Nisā': 11 was passed down in a society where inheritance is only given to sons, who are the family's pride. Quran is then passed on to close relatives with no inheritance rights. Then, the Quran recommends giving alms to orphans and the poor. The previous verses (QS al-Nisā': 7-10) protect the two most discriminated groups, namely women and orphans (Qadafi, 2011).

According to him, the share of women doesn't have to be half of the share of men, as stated in QS al-Nisā': 11. The opinion is as follows:

In fact, in the historical context, the main purpose of Islamic law is to limit the share of men, which has almost no limits, bearing in mind that the maximum limit for men is the same as for women. Conversely, the minimum limit for women is half of the minimum limit for men. Judges can determine equity (if needed) because it does not conflict with the limits Allah (hudūd) set dalam QS al-Nisā': 13.

Table 2. Contemporary Scholars Interpretation

Contemporary Scholars	Interpretation	Source
Fazlur Rahman	Flexible, adapted to certain situations and conditions	Fazlur Rahman, Islam and Modernity transformation of an intellectual Muslim
Munawir Syadzali	1:1, if involved (material reasons/responsible for family needs); 2:1 if women are not involved	"Reactualization of Islamic Teachings", in Iqbal Abdurrauf Saimina (ed.) Polemics of Reactualization of Islamic Teachings
Quraish M. Shihab	2:1 (according to material rights and obligations)	Quraish Shihab, Tafsir al Misbah: Messages, Impressions and Harmony of the Quran

Source: Compiled by author, 2022

Another scholar who disagrees with the 2:1 inheritance system is Muhammad Syahrur, an intellectual from Damascus, Syria, whose theory is known as the "*Theory of Limitations (nazariyat al-hudūd)*". Stating that the law of inheritance needs to be changed, the problem of dividing inheritance 2:1 increases and decreases the percentage of inherited assets both in terms of *aul* as well as degrees and parties who are not entitled to receive inheritance need to be adjusted to current conditions (Syahrur, 2014).

In determining the law of inheritance, there are limits to God's provisions that may not be violated. Still, there is an area of *ijtihad* that is dynamic, flexible and elastic (Murtadlo, 2018). In discussing the issue of inheritance division, Syahrur is based on QS al-Nisā': 13.

On sentence *tilka hudūdullah*, here is the plural form of *mufradat had*, which means limit. Using this plural form indicates that God determines many, and humans can choose those limitations according to demands and circumstances. Humans don't bear the burden of sin as long as it's still in the border corridor (Burhanudin, 2003).

The verse explicitly states that the division of inheritance is one of the limits of sharia law determined by Allah. Syahrur emphasized that Islamic law cannot be "single" with one understanding and point of view. Islamic law must always change, progress and develop. So the Quran will always have limits (*hudūd*). There is a maximum limit (*al-ḥad al-a'lā*) and minimum limit (*al-ḥad al-adnā*), as well as variations of both (Murtadlo, 2018). Within these limits, the scholars are obliged to develop and establish the law according to the agreement and socio-political conditions of the community.

In principle, basis of the establishment Sharia is the wisdom and benefit of mankind in this world and the hereafter. This benefit lies in justice, perfection, mercy, prosperity and wisdom. Anything that hinders justice or makes justice itself become persecution, understanding becomes violence, convenience becomes a difficulty, and wisdom becomes an absurdity. This has nothing to do with the Sharia or violating the Sharia itself (Ahyani, et. al, 2023). Islamic Sharia must be built based on wisdom and human benefit now and in the future. It's completely just, merciful, fully beneficial and wise (Ahyani, et. al, 2023).

Based on the *maṣlahah* aspect, inheritance should be carried out by deliberation and consensus to avoid conflicts and misunderstandings in the future. Customary inheritance law is not written but applies and is carried out by the area's people. Customary law is a cultural product containing substance regarding cultural values such as creativity, initiative and human feelings. It can also be said that custom was born because of an awareness of human needs and the desire to live in a fair and civilized way as the actualization of human civilization (Arif, 2022). This customary inheritance law is sourced from local cultural values as well as a form of affection (Ahyani, et. al, 2023).

Improving women's position in a pluralistic society in Indonesia can be done by adjusting the social conditions according to the times so that the 2:1 inheritance distribution is not just (Kususyanah, 2021). The basis of justice in Islamic inheritance is the magnitude of the

role, burden or responsibility assigned to it. Men should provide for their family members, so it's appropriate for men to be twice as big as women (Nashirun, 2022). However, along with the times, the unequal distribution of inheritance between men and women has become the excuse for gender equality and women's emancipation, considering that many women have the same role.

In terms of the role that a woman is active in a job or existing organizations, Munawir Sjadzali strengthens his statement by taking a contextual understanding of the Quran that well-known scholars have carried out (Faizah, et al., 2021). By analogy with the policies made by Caliph 'Umar ibn Khattāb towards spoils of war that weren't in accordance with the instructions of QS al-Anfāl: 41. This policy was opposed by many of the Prophet's companions because they were accused of leaving scriptures. Besides that, Caliph Umar didn't give zakat to converts as stipulated in QS al-Tawbah: 60 because the situation and conditions have changed, and wealthy converts are deemed not to need to receive zakat anymore.

Changes and differences in fatwas are permissible because times, places, and customs have also changed (Faizah, et. al, 2021). Every decision must be focused on the interests of society, both the interests of this world and the hereafter. Furthermore, Munawir uses the concept of *maṣlahah* to explain when there's a controversy between *naṣ* and *ijmā'*, and it's obligatory to prioritize the community's interests (Abu Bakar, 2014). Thus, from this explanation, it can be concluded that the distribution of inheritance is equal between men and women, which is considered fair in society. This provision can be used as long as women have a role in the family.

Sigar semongko and *gilir waris* is a traditional inheritance system that has long existed in Jember. They prefer to share inheritance with customs with various considerations compared to the Islamic way. The existence of this application doesn't mean abolishing the concept of Islamic inheritance, but what has been implemented is a form of mutual benefit. There are beneficial values in this practice, as follows: a) Value of Justice and Balance of Rights. The Quran has regulated how each inheritance will not occur in disputes and the practice in Jember community. Even though they differ in the distribution portion, this practice is considered the fairest and can solve all kinds of polemics and family unity (Dewantara, 2017);

b) Tolerance value. Even though the Quran strictly divides the share of men twice as much as women (al-Ghazi, 2014), this concept has become a polemic in the distribution of inheritance and is detrimental to many parties. This indicates that the 2:1 concept doesn't have to be applied if the disadvantage is greater. This is similar to one of the fiqh rules, which reads, "*Al-riḍā bi shay'in riḍā bimā yatawalladu minhu*", which means "*Relaxing to something means being willing to what is born of that thing*" (al-Suyuthi, 2011). Therefore, the distribution of inheritance must be based on the concept of *maṣlahah* (Yasin, 2021): not opposed to the Quran and Hadith; identifying *maṣlahah* must be done with experts; if *maṣlahah* is not implemented, problems will arise in the future.

According to the writer, the concept of *sigar semongko* and *gilir ahli waris*, as the people of Jember agreed not to contravene the Quran and Hadith. Religious leaders in Jember also admit this, saying that inheritance in the holy book is final and absolute. However, to get the value of justice and welfare, it needs to be interpreted again in order to create justice and balance, which is the substance of the inheritance verse itself. The distribution in equal numbers between men and women results from deliberation within the family for a more beneficial designation. That way, quarrels in the future can be avoided. c) Cultural Values. Talking about inheritance is a very sensitive issue. Not a few quarrels between siblings arise from inheritance problems. So, customary inheritance (in this case, *sigar semongko* and *gilir ahli waris*) is a solution for the Islamic community in Jember. A custom is a form of culture that is the country's wealth (Martono, et al., 2018). Implementing customary inheritance is a form of preserving cultural values, with guarantees of peace, tolerance, and non-violence and not conflicting with Shari'a.

Undeniably, applying inheritance law in Indonesia means it will be affected by culture, religion and state law. In this way, the problem of inheritance distribution in Jember doesn't only emphasize fiqh aspects but is also based on the local cultural context. Likewise, state law (in this case, court decision) is the benchmark and *legal standing* in the event of an inheritance dispute).

Maṣlahah is a branch of ushul fiqh. *Maṣlahah* can be interpreted as preserving the meaning of sharia for the virtues outlined and setting boundaries, not based on desire and lust alone (Idris & Aslikha, 2019). The purpose of Islamic law is to benefit humankind, both in this world

and in the hereafter. This is in accordance with the mission of Islam as a whole as a religion of mercy. Al-Syātibī (nd) has confirmed *"It's known that the promulgation of Islamic law is to realize the absolute benefit of creatures"*. A similar expression was also given by Yūsul al-Qarādhāwī (1998), as follows: *"Where there's a benefit, there's God's law"*.

Al-Ghazālī (nd) defines *maṣlahah* as an effort to achieve and create benefits and reject harm. Thus, *maṣlahah* and *shari'ah* law must be interconnected, especially as a cause in law construction. A fiqh rule reads: *"Law goes hand with reason in terms of its existence and non-existence."* Based on the rule, creating benefits or eliminating harm can be the cause (God) for achieving benefits based on *syara'* (Sulong, et. al, 2013).

In line with the fiqh *"al-darāru yuzālu"* rules, harm must be avoided to achieve benefit together. This rule explains that humans must avoid actions that hurt themselves and others and should not harm others (Faizin, 2016). This rule is also often associated with hadith narrated by Ibn Mājah from Ibn 'Abbās as follows, *"lā dharara wa lā dhirāra"* which means *"cannot harm and cannot be harmed"*, in another rule, namely, *"dār' al-mafāṣid muqaddamun 'alā jalbi al-maṣālih"* which mean *"rejecting a harm is more important than attracting a benefit"* (Idris & Aslikha, 2019). Based on *maṣlahah* aspect and fiqh rules, equal distribution of inheritance is permissible due to several conditions and locations accompanying the interpretation of the verse on inheritance.

Social interpretation in the customary inheritance system in Jember (*sigar semongko* and *gilir ahli waris*) is a form of interpretation of social values since it indirectly contains the principles of harmony, tolerance and equal rights. In this case, each party knows their rights and position as family members and resolves problems amicably through deliberations. In addition, all heirs are treated equally by their parents, regardless of gender, marital status, religious differences or birth order (first, second, third, etc.).

Sigar semongko and *gilir ahli waris* have become a customary habit of the community that takes place continuously. These customs are within the scope of *uṣūl al-fiqh* and are included in the study of *'urf*. *'Urf* is one of the bases in establishing a law that does not have an explicit text in the Quran and Hadith, as the rule of fiqh reads, *"al-'ādah muḥakkamah"* which means *"custom can become law"* (Idris & Aslikha, 2019).

Not all traditions that take place are permissible in Islam. Therefore, in order to become a source of Islamic law, some conditions must be met

and fulfilled, namely (Idris & Aslikha, 2019): first, generally practised by the community; second, in the form of a habit that is currently running in society; third, not against the Quran and Hadith; fourth, in the event of a dispute, it's only used when there is no explicit refusal in its nature to use custom from one of the parties involved.

Looking at the inheritance practices mentioned above, Islamic law has a clear conflict, such as the rights transfer. At the same time, the heir is still alive (inheritance grants), the portion of the male and female inheritance, and the method of inheritance (inheritance grants). Even so, these customs have been generally practiced by the community, and their truth has been acknowledged by religious leaders (*Kyai*). Even though it's not in accordance with the provisions and principles of inheritance in Islam, this practice is considered fair and balanced according to current conditions. The coercion to use the Islamic inheritance system will eventually lead to problems and confusion, so preventing the loss here becomes a more important value. Thus writer concludes that by adhering to the *maṣlahah* values and rules about '*urf* (customs can become laws), the practice of *sigar semongko* and *gilir ahli waris* legally done.

Conclusion

From the discussion above, it can be concluded that the distribution of inheritance in Indonesia mostly follows the customs or habits prevailing in society. The provisions in Islamic inheritance law, like the obligation to share an inheritance with twice a portion for sons than daughters (QS al-Nisā': 11) are rarely carried out and are considered unfair. It is like a system *sigar semongko* in Jember. Local religious leaders confirmed the existence of this model of inheritance and considered it more beneficial because both men and women have the same responsibilities. In addition, there's also a system *gilir ahli waris* to manage productive assets, which is contrary to the individual principle in Islamic inheritance law, which requires all property to be owned and controlled by individual heirs. The division of inheritance is given when the heir is still alive, contrary to the basic principle of inheritance, where property is only divided after death (QS al-Nisā': 11-12) and the principle of *ijbārī*.

Responding to customary inheritance practices, which are considered more appropriate and solutive as well as minimizing disputes, encourages contemporary scholars to reinterpret inheritance verses, especially QS

al-Nisā': 11. The Basis of the argument is *asbāb al-nuzūl* as a result of a dialogue between God, humanity and social reality. The concept of inheritance distribution in Islam is considered inappropriate now. The law of inheritance is prescribed to achieve the benefit of the people, so in order to accomplish this, *maḍarāt* may be eliminated (*dār al-mafāsīd muqaddamun 'alā jalbi al-maṣāliḥ*), included in the concept of inheritance sharing, which was agreed to be divided equally among the heirs.

Since it takes continuously, *sigar semongko* and *gilir ahli* waris have become a 'urf. Even though it's not explicitly justified in practice in Islamic inheritance, the *maslahah* value contained in it can be used as a basis for the permissibility of taking law (*al-ādat muḥakkamah*), which means "custom can become law). In addition, there are good values such as harmony, justice, balance of rights, tolerance, and local culture.

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