

Sequential Inheritance Implementation: A Maqasid Sharia Perspective by Jasser Auda (A Case Study in Pagelaran Village, Pagelaran District, Malang Regency)

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Abstract:

The urgency of proper inheritance distribution is greatly needed in society. Therefore, an appropriate concept and legal framework are necessary in practice to ensure that the essence of justice and the objectives of Islamic law in inheritance are not compromised. This is exemplified by the practice in Pagelaran village, where inheritance is distributed not according to Islamic law, even though the majority of the population is Muslim. They have a unique method of rotating the inheritance among heirs, taking turns. This practice presents an interesting subject for analysis using the theory of maqasid shari'ah to understand the essence of the objectives behind the enactment of inheritance law in Islam. This research aims to identify the practice of implementing inheritance in rotation and analyze it with maqasid sharia theory so that the justice aspect can be known. This study is empirical, using a sociological and conceptual approach, data obtained through structured interviews with the perpetrators of rotating inheritance. The results can be summarized in two aspects: (1) The practice of rotating inheritance in Pagelaran village is carried out alternately among heirs based on mutual agreement, and in practice, this is driven by the limited land available for distribution. It also serves as a preliminary step toward permanent land division, with the proceeds from the rotation used to cover the costs of certifying the land for each heir; (2) The practice of rotating inheritance fulfills the purpose of maqasid shari'ah as outlined by Jasser Auda and aligns with the essence of the enactment of inheritance law, ensuring the fair distribution of inheritance. This is due to the mutual agreement among the heirs, while also considering the aspects of protection and resilience within the family.

Keywords: *Inheritance; Rotation; Maqasid Sharia.*



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Introduction

The division of inheritance is an important aspect of community life, especially within Islamic communities that uphold cultural values and customs unique to each region. As a result, the guidelines for inheritance distribution may vary depending on the beliefs and practices followed in each community.¹ The division of inheritance under customary law differs from the general inheritance law, as customary law is based on unwritten and dynamic rules that can be adjusted to changing times. In Indonesia, where inheritance law remains pluralistic, the practice of adhering to the inheritance law followed by the deceased is still prevalent in society. Therefore, three legal systems have emerged as the scope of inheritance distribution within the community: customary inheritance law, Islamic inheritance law, and the inheritance law outlined in the Civil Code (BW).²

Islam is the predominant religion followed by the majority of the population in Indonesia. According to the latest statistical data from the Ministry of Home Affairs, at the end of 2022,³ 86.93% of Indonesia's population adheres to Islam.⁴ Therefore, it is only fitting that Muslims in Indonesia use Islamic law to resolve inheritance matters within their families. However, in reality, the majority of people still adhere to customary law.

That said, the application of customary law, which dominates and overlooks Islamic law, is considered valid as long as it aligns with customary practices and does not contradict the fundamental principles of Islamic faith. Consequently, the implementation of this law depends on the willingness of the local community. The flaw in this reception theory has significant implications for the application of Islamic law, especially regarding inheritance law in Indonesia today. Despite the fact that the majority of Indonesia's population is Muslim, only a small portion follows Allah's law. In fact, the severe consequences for Muslims who neglect to implement Allah's laws are clearly stated in Surah Ali Imran, verse 4.⁵

Inheritance distribution often leads to disputes, such as dissatisfaction among heirs or perceived injustice in the distribution received. This can be caused by conflicts between Islamic inheritance law and customary inheritance law, as well as differences in the system of heirs, inheritance objects, and the timing of inheritance distribution. In some cases, such as in Pagelaran Village, Malang Regency, East Java, the community still strongly adheres to customary inheritance laws, which differ from the Islamic inheritance law commonly applied in Indonesia. The majority of the population in Pagelaran Village is Muslim. According to data from the Pagelaran District Statistics Agency, out of the total population of 7,579 people in Pagelaran Village, only 13 people are non-Muslim,

¹ Abdul Haris Naim and Ahmad Safi'i, "Analisis Implementasi Pasal 183 KHI Tentang Pembagian Harta Waris Di Desa Pasuruhan Kidul Kecamatan Jati Kabupaten Kudus," *YUDISIA : Jurnal Pemikiran Hukum Dan Hukum Islam* 12, no. 2 (2021): 187, <https://doi.org/10.21043/yudisia.v12i2.12345>. 188.

² Ellyne Dwi Poespasari, *Pemahaman Seputar Hukum Waris Adat Di Indonesia*, Mei 2018 (Jakarta Timur: Prenada Media Group, 2018). 2.

³ Ir Surya Astuti, "Kecamatan Pagelaran Dalam Angka," BPS Kabupaten Malang, 2023, <https://malangkab.bps.go.id/publication.html?page=3>.

⁴ Viva Budy Kusnandar, "Beragama Islam Pada 31 Desember," *Databooks*, 2022, <https://databoks.katadata.co.id/datapublish/2022/02/12/sebanyak-8693-penduduk-indonesia-beragama-islam-pada-31-desember-2021.1>.

⁵ Saifullah Basri, "Hukum Waris Islam (Fara'Id) Dan Penerapannya Dalam Masyarakat Islam," *Jurnal Kepastian Hukum Dan Keadilan* 1, no. 2 (2020): 37, <https://doi.org/10.32502/khdk.v1i2.2591>.

leaving 7,566 people who practice Islam.⁶ However, in reality, not all individuals in society use Islamic law for the division of inheritance. Many people follow their own family customs when it comes to distributing their inheritance. One such practice is the method of rotating the inheritance. In this process, the inheritance is not divided physically but is instead shared in terms of its benefits.

A similar practice also occurred in Kelam Tengah District, Kaur Regency, Bengkulu⁷ and Ketamas Dungus Village Mojokerto Regency, East Java.⁸ Both are almost the same in terms of practice as what happens in Pagelaran Village, but the difference lies in the object of inheritance and the reasons underlying the heirs doing the practice, more details will be explained in this study.

This practice is commonly applied to inherited assets such as fields or rice paddies. The inheritance is not divided, but only the benefits are shared. This practice is considered inconsistent with Islamic law, because in the rotation system, the shares for both men and women are equal, at a 1:1 ratio. In contrast, Islamic law stipulates that the share for men should be twice that of women, or a 2:1 ratio.⁹ However, at the same time, reality shows that the inheritance law, which follows the 2:1 concept, no longer aligns with the spirit of justice in Indonesian society. As a result, many Indonesian Muslims are beginning to abandon it. For example, most Javanese people use the *dum dum kupat* or *sigar semangka* system, which is the distribution of inheritance equally to each heir regardless of gender as a form of justice for them and also the Minagkabau community which is still thick with matrilineal customs even though the family adheres to Islam.¹⁰

This statement reflects the view that society believes *fara'id* (Islamic inheritance law) is no longer suitable for addressing inheritance issues. Ongoing social changes, the varying needs of heirs, and the increasing role of women compared to the early days of Islam have all contributed to this shift. Consequently, society is moving away from *fara'id* in inheritance distribution and perceives alternative approaches as more ideal in dealing with these changes. If this situation continues, the belief that the science of *fara'id* does not reflect justice will cause Islamic law to be seen as rigid and outdated. Over time, *fara'id* as Islamic inheritance law will be increasingly abandoned by Muslims themselves. Therefore, the Qur'an and hadith as sources of Islamic law may no longer be considered applicable to all times and places (*shalih likulli zaman wa makan*). Thus, inheritance

⁶ Astuti, "Kecamatan Pagelaran Dalam Angka.", *diakses pada 21 februari 2024*.

⁷ A Aigistia and I Fahima, "Pemanfaatan Harta Waris Bersama Dengan Cara Gilir Sawah Perspektif Hukum Islam (Studi Pada Masyarakat Kecamatan Kelam Tengah Kabupaten Kaur Provinsi Bengkulu)," *Qiyas: Jurnal Hukum Islam Dan ...* 7 (2022): 79–85, <https://ejournal.iainbengkulu.ac.id/index.php/QIYAS/article/view/6643%0Ahttps://ejournal.iainbengkulu.ac.id/index.php/QIYAS/article/download/6643/3717>.

⁸ Alfiyaturrokhmaniyah, "Fenomena Pemanfaatan Harta Waris Secara Bergilir Ditinjau Dari Masalah Mursalah: Studi Kasus Desa Ketamas Dungus Kecamatan Puri Kabupaten Mojokerto" (UIN Maulana Malik Ibrahim, 2020).

⁹ Adelina Nasution, "Pluralisme Hukum Waris Di Indonesia," *Al-Qadha* 5, no. 1 (2019): 20–30, <https://doi.org/10.32505/qadha.v5i1.957>. 29.

¹⁰ A & A Law Office, "Tinjauan Hukum Islam Terhadap Pembagian Waris Adat Jawa," Advocate and Legal Consultant, accessed November 29, 2024, <https://aa-lawoffice.com/tinjauan-hukum-islam-terhadap-pembagian-waris-adat-jawa/>.

regulations that can accommodate social changes must be promptly formulated by scholars.¹¹

Based on the practice carried out by the community in Pagelaran Village, this article aims to further discuss the practice of rotating inheritance, as in essence, the establishment of inheritance law in Islam is intended to serve a beneficial purpose, commonly referred to as *maqasid sharia* (the objectives of Islamic law). However, with the practice of rotating inheritance, which does not align with Islamic inheritance law, the question arises as to whether it remains relevant to the original objectives for which Islamic law was legislated. This paper will be analyzed using Jasser Auda's theory of *maqasid sharia*. Jasser Auda is a contemporary scholar who proposed *maqasid sharia* as a means to establish clear objectives behind the legislation of a law. Furthermore, developing inheritance distribution through the lens of *maqasid syariah* is an appropriate approach to address social changes without departing from the core teachings of the Quran and Hadith.

In addition, *maqasid sharia* theory is relevant to address this issue because it provides a flexible, contextual, and *maslahat*-oriented framework. With *maqasid*, the focus of analysis is not only on the technical aspects, but also on the objectives of Islamic law, such as justice, harmony, and welfare. This approach ensures that non-standard practices remain within the corridors of *sharia* and support of the *mashalih al-ummah*.

Method

This article uses an empirical research method with a sociological approach to examine the phenomenon of rotational inheritance distribution in Pagelaran Village. Additionally, the article employs a conceptual approach as its analytical tool, specifically the concept of *maqasid sharia* by Jasser Auda. The sources of law used in this study include primary legal sources, obtained directly through structured interviews with those involved in the rotational inheritance process, and secondary legal sources, which are derived from books by Jasser Auda and other journals that support the analysis in this research. Pagelaran Village in Malang Regency was chosen as the subject of this study because it is home to a practice of inheritance distribution that, although indirectly, does not align with the Islamic inheritance law, despite the majority of the population being Muslim.

After the required data is collected, the data will be analyzed in depth in order to answer the existing problem formulation so that the objectives of this research can be achieved. Because in this stage the data will be analyzed with Jasser Auda's *maqasid sharia* theory, it also uses a qualitative descriptive approach by making a series of interpretations so that the data has its own scientific value.

The Practice of Rotational Inheritance Distribution

The practice of rotational inheritance distribution involves the division of inheritance in turn among the heirs, allowing them to benefit from the assets in rotation. This practice is commonly seen in the village of Pagelaran, Malang Regency, where it arose due to the limited number of inheritances and a large number of heirs. If the inheritance were divided physically, it would be split into small portions that do not

¹¹ Abdul Aziz, "Pembagian Waris Berdasarkan Tingkat Kesejahteraan Ekonomi Ahli Waris Dalam Tinjauan Maqashid Syariah," *De Jure: Jurnal Hukum Dan Syar'iah* 8, no. 1 (2016): 48–63, <https://doi.org/10.18860/j-fsh.v8i1.3729>. 49.

provide satisfaction to the heirs. To prevent disputes among the heirs due to dissatisfaction with the division, the solution adopted is to rotate the inheritance. The goal of this practice is to ensure fairness among the heirs. Even though it has become customary, there are no special consequences for families who do not practice rotating inheritance as has been the tradition. This is because the law in Pagelaran Village is flexible, so it does not bind heirs to adhere to one particular law. According to the data found, there are 5 families in Pagelaran Village that practice rotational inheritance distribution. The details are as follows:

Table 1. Data on the Implementation of Rotational Inheritance

No	Name	The Object of Rotating Inheritance	The Area of the Inherited Property
1	Mr. Ahmad	Rice Field	150 m ²
2	Mrs. Ngatemi	Terraced Land	200 m ²
3	Mrs. Sumarni	Farm Land	10000 m ²
4	Mrs. Karsini	Rice Field	150 m ²
5	Mrs. Sumakyah	Rice Field	250 m ²

Based on the data, it is known that the total area of inherited land being rotated is less than 2 hectares. According to the applicable regulations in Indonesia, specifically Article 289 of the Compilation of Islamic Law (KHI), which addresses agricultural land inheritance of less than 2 hectares, it should be maintained as a single unit and utilized for the collective benefit of the heirs. This statement reflects support consistent with the provisions of the Compilation of Islamic Law.

The practice of rotating the inheritance involves not directly dividing the deceased's estate but rather using the inherited land for its benefits. Therefore, this practice can be categorized as a delay in the division of inheritance, as the inherited property remains jointly owned by the heirs. Several inheritance law experts in Indonesia argue that the delay in dividing inheritance can be referred to by various terms, such as "undivided inheritance," "postponed inheritance," or "unsettled estate." They view the delay in inheritance as the process of postponing the division of the inheritance from the time of the deceased's death until the actual distribution takes place. This statement clarifies the definition of delayed inheritance and how inheritance law experts in Indonesia understand this concept.¹²

The heirs who benefit from the rotating inheritance system are those who have a blood relation to the deceased, specifically the sons and daughters of the deceased. As stated in the Qur'an, this group is classified as *dhul-fara'id*, which refers to heirs who

¹² Ahmad Sarwat, *Fiqh Mawaris* (DU Center, n.d.).

have fixed and unchanging shares.¹³ Therefore, both male and female children become the primary heirs in the practice of rotating inheritance in Pagelaran Village.

Based on information gathered through interviews, the process of utilizing inheritance through rotation in Pagelaran Village applies to assets such as rice fields or plantations, which are managed on a rotating basis, starting with the eldest sibling or first-born child, followed by the second, and so on, until the youngest sibling. The cycle then repeats, starting again with the eldest child. The decisions regarding this process are made through deliberations among the heirs after the death of the decedent. The time frame for the implementation of the rotation is also based on mutual agreement among the heirs. In this regard, each family differs. For example, Mr. Ahmad's family members each receive a two-year rotation because the inherited asset is a rice field, which has a quick harvesting process. However, in contrast, the family of Mrs. Ngatemi has each heir rotate for five years, as the inherited land is a type of terraced land suitable only for planting sengon trees, which requires a longer time to harvest. From this information, it can be concluded that the type of land is one factor that affects the duration of the inheritance rotation.

In practice, if one of the heirs is unable to work the land, another heir can step in to replace them. This arrangement is referred to as renting, where the person working the land will pay rental fees to the heir who is unable to work their turn. This ensures that no party feels disadvantaged in the process. The purpose of this rotational inheritance system is to allow all heirs to benefit from the inherited property. As mentioned earlier, the rotation is necessary due to limited land and a large number of heirs, which means the land would be divided into very small portions if distributed equally, leaving some heirs unsatisfied. Therefore, the practice aims to balance the income among the heirs, allowing them to utilize the benefits of the land or inheritance without fully taking ownership.

There are three main reasons behind the implementation of the rotational inheritance system in Pagelaran Village: (1) The agreement of all heirs, (2) The cost of land certification for the rotating inheritance, and (3) The inheritance land or paddy fields are less than 2 hectares. The first reason for adopting this system is the mutual agreement among all the heirs to divide the inheritance in rotation. With this agreement, each heir can present their arguments, ensuring that all voices are heard and a consensus is reached for the continuation of the inheritance division. This approach helps minimize the risk of conflicts that may arise between heirs in the future.

The second reason for rotating the inheritance is to cover the costs of processing land certificate issuance. Since the inherited land is still registered in the name of the parents or the deceased, the heirs delay the division of the inheritance until the land certificates for each heir are obtained. The cost of certifying the land is covered through the utilization of the inherited property on a rotating basis, ensuring that all heirs receive fair treatment. This was explained by Mrs. Sumakyah during the interview.

The final reason behind the practice of rotating inheritance is that the inherited land or rice field is less than 2 hectares. As mentioned earlier, the rotation of inheritance aims to equalize the income of the heirs. Therefore, a rotation system is implemented for the land or rice field so that the harvest can be utilized. According to information from several sources, the area of the inherited land in this rotation system is less than 1.5 hectares, with the average land size being only 200 m². As a result, it becomes difficult for the heirs to

¹³ Nasution, "Pluralisme Hukum Waris Di Indonesia." 26.

divide the inheritance due to the limited amount of inherited assets and the large number of heirs, making it impossible to divide the land or rice fields unless they are sold. However, most of them have a principle to preserve the inheritance from their parents.

Based on the interview above, it can be concluded that the practice of rotating inheritance begins with the oldest child of the deceased. The duration of this practice across generations depends on the family's agreement, but generally, it only lasts for the first generation. If an heir is unable to cultivate their share, they agree that the heir can ask a capable sibling to rent their turn. Furthermore, the practice of rotating inheritance in Pagelaran Village does not have a clear historical origin, as it is based on the family's idea to prevent the inherited land or rice fields from being sold, allowing them to benefit from it in rotation instead. This practice is carried out through an agreement among the heirs and starts after the death of both parents or one of them.

However, in practice, the rotation of inheritance has an unfair aspect in its implementation. This occurs when the crops in the inherited property fail, as the risk falls on the heir who happens to be in charge during that particular rotation. The agreed-upon period is clearly set at two years, and if, within those two years, there should have been six harvests but two failed, it becomes the responsibility of the heir in charge at that time, as explained by Mr. Ahmad in the interview. In reality, the crop failure is not caused by the heir's actions but by the will of a higher power, which makes the practice unfair.

However, because the practice of inheritance division in Pagelaran Village is based on mutual agreement or consultation, the heirs must adhere to the principles of willingness and mutual consent, preventing conflicts within the family regarding the matter.

Analysis of Jasser Auda's Maqasid Sharia on the practice of Rotating Inheritance

The establishment of inheritance law in Islam brought positive changes, especially for women. In the pre-Islamic era, inheritance distribution was patrilineal, meaning that minors and women had no rights to inheritance, even if they were children or heirs of their deceased parents.¹⁴ Based on Islamic history, the inheritance system before Islam was highly unjust, where inheritance rights were only granted to adult men who were capable of fighting and obtaining wealth from war spoils. Meanwhile, minors and women had no rights to inheritance, even if their parents were wealthy.¹⁵ However, with the arrival of Islam, every individual, both male and female, has the right to inherit. This was established to ensure justice in the division of inheritance within families. Moreover, clear and fair rules ensure that each heir receives their rightful share according to religious principles.

The issue of inheritance becomes crucial when not distributed according to each heir's rightful portion, as it is prone to causing conflicts within the family. Especially in families that should remain united, they may be torn apart simply because heirs feel the inheritance distribution is unjust. Therefore, to realize the goal of the Shariah in

¹⁴ Moh Muhibbudin, *Hukum Kewarisan Islam* (Jakarta: Sinar Grafika, 2009). 32.

¹⁵ Asrizal Saiin, "Menelaah Hukum Waris Pra-Islam Dan Awal Islam Serta Peletakan Dasar-Dasar Hukum Kewarisan Islam," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 1 (2017): 125, <https://doi.org/10.14421/ahwal.2016.09108>.

inheritance division, Islam has defined the shares of inheritance for each heir based on the historical context of that time.

that time.

As per Jasser Auda's classification of the hierarchy of Maqasid al-Shariah, the first level is *Maqasid al-'Ammah* (General Maqasid), which encompasses all benefits within the scope of Islamic legislation that are universal in nature, such as justice, equality, tolerance, ease, and the aspects of *dharuriyat* (necessities) in classical Maqasid. To achieve the goals of inheritance that create justice, harmony, and family resilience, it is necessary to fulfill the fundamental objectives of Maqasid al-Shariah. According to Jasser Auda, the levels of needs (*darurat*) are divided into six categories that must be preserved in a specific order, starting with the highest, which are protecting faith, protecting life, protecting wealth, protecting intellect, protecting lineage, and protecting honor.¹⁶

Maqasid Sharia refers to the objectives, principles, and intentions behind Islamic law. It encompasses the general aims of Islamic legislation, which include deeper meanings and aspects of wisdom considered by the lawgiver (Allah). Maqasid Sharia is an integral part of Shariah itself and, therefore, does not have a beginning or subject to change or evolution. In other words, Maqasid Sharia represents divine goals, and in this context, it also includes five key elements of protection: the protection of religion (*din*), the protection of life (*nafs*), the protection of lineage (*nasl*), the protection of intellect (*aql*), and the protection of wealth (*mal*). Thus, Maqasid Sharia plays a crucial role in ensuring that Islamic law is applied holistically and multidimensionally to achieve the desired outcomes while staying true to the spirit of the law.

In the practice of rotating inheritance distribution in Pagelaran Village, Pagelaran Subdistrict, the system is closely related to inheritance law. However, several issues within families have led them to adopt the practice of rotating inheritance among the heirs. They agreed to rotate the land so that each heir would receive a sense of fairness, preventing conflicts arising from dissatisfaction among the heirs. According to the data obtained by the researcher, several important points emerge regarding the practice of rotating inheritance in Pagelaran Village, as follows:

1. Agreement Among All Heirs

The practice of rotating inheritance among the heirs is based on mutual consultation and family agreement, including the technical aspects of how the inheritance will be divided and how long each heir will have the turn to cultivate the land. These decisions are determined through discussion and consensus. In the consultation process, the heirs will address the settlement of the deceased's responsibilities, including funeral arrangements and outstanding debts, followed by discussions on the inheritance left behind by the deceased.

Allah SWT has stated that when dealing with worldly matters, it is recommended to consult as the best solution. If a matter is decided through mutual consultation, it will lead to an agreement that guarantees all rights and results in the best decision. This is in line with the Qur'an, Surah Ash-Shura, verse 38, which means:

"...and those who respond to their Lord and establish prayer and whose affairs are decided by consultation among themselves; and who spend from what We have provided for them."

¹⁶ Saiin. 289.

Islam places great emphasis on the unity and harmony among human beings. Islam does not encourage discord or hostility within families, as stated in the words of Allah SWT:

"And hold firmly to the rope of Allah all together and do not become divided." (Qur'an, Surah Al-Imran: 103)

Through consultation, a common ground can be found that leads to mutual willingness and sincerity among the heirs. This helps achieve the main goal of unity and peace, which aligns with the objectives of Islamic law in promoting the welfare of humanity—seeking benefits, avoiding harm, and alleviating difficulties.

The agreement among all heirs represents a *maslahah* (public interest) or a concept that can be used as a consideration in creating a quality family. According to Jasser Auda's concept of Maqasid Sharia, the focus is on development, directed towards building societies based on human rights, social justice, and humanity, with a forward-looking orientation and clear goals.¹⁷ The mutual agreement among heirs can be understood in the context of Maqasid Sharia according to Jasser Auda. Jasser Auda's classification of Maqasid Sharia, specifically *Maqasid Al-'Ammah* (General Objectives), encompasses all benefits in legal behaviors that are universal, such as justice, equality, and ease, including the *daruriyat* (essential needs) in classical maqasid. The agreement of all heirs in determining the inheritance division is in alignment with *Maqasid Al-'Ammah*, as it involves the benefit of engaging all heirs in a consensus based on the principles of balance and fairness.

2. For the Cost of Land Certification in Rotation

Based on the data collected by the researcher, the practice of rotating inheritance in Pagelaran Village is considered an initial step toward the permanent division of inheritance. This is done to accelerate the process of obtaining funds for the certification of the inherited land, ensuring that each heir receives legal certainty regarding their share of the land.

Land certification is crucial to guarantee legal certainty and protect property rights for its owners. Certification provides clear legal recognition of land ownership and control. This is important to prevent future disputes and conflicts regarding land ownership, as well as to provide a solid foundation for transactions and property development.¹⁸

A land certificate is a formal document that protects the landowner's rights against unlawful actions, such as fraud and forgery related to land ownership. In addition, through land certification, people can gain easier access to financial services, credit, and development programs that require proof of land ownership. This can enhance the well-being of the community and support economic development.¹⁹ Thus, the urgency of land certification is not only related to legal certainty but also has significant implications for the protection of rights and community development.

¹⁷ Jasser Auda, *Maqashid Syariah A Beginner's Guide* (London: Cromwell Press, 2008).

¹⁸ Dyah Ochtorina Susanti, "Urgensi Pendaftaran Tanah (Perspektif Utilities Dan Kepastian Hukum)," 2018, 1–21.

¹⁹ Yulies Tuena Masriani, "Pentingnya Kepemilikan Sertifikat Tanah Melalui Pendaftaran Tanah Sebagai Bukti Hak," *Jurnal USM Law Review* 5, no. 1 (2022): 539–52, <https://doi.org/10.33476/ajl.v7i1.331>.

This is in line with the practice of rotating inheritance in Pagelaran Village. The heirs do not immediately divide the land permanently among themselves but rotate the land first for approximately one year to cover the costs of land certification. Before the rotation begins, the heirs have already outlined each heir's portion of the land to determine the exact area to be certified. The land certification is carried out to ensure legal certainty and avoid family conflicts in the future.

Therefore, the collection of funds for land certification carried out by the heirs practicing rotating inheritance in Pagelaran Village is part of the effort to protect property (*hifdz mal*), which aligns with the goals of Maqasid Sharia. With land certification, ownership rights over the land are legally protected, allowing the community to utilize the property clearly and securely. Additionally, land certification also serves as an effort to protect lineage (*hifdz nasl*), helping heirs receive their share of land clearly and fairly, ensuring the continuation of land ownership across generations. Furthermore, the preservation of lineage by avoiding family conflicts over inheritance disputes due to the lack of legal certainty can serve as a preventive measure.

3. Efforts to Preserve Family Inheritance and Avoid Conflict

The practice of rotating inheritance in Pagelaran Village occurs due to the limited size of the land left by the deceased, which is less than 2 hectares. As a result, through mutual consultation among the heirs, the practice of rotating the inheritance was agreed upon and can be carried out. This is also aimed at preserving the inheritance so that it does not fall into the hands of outsiders but remains within the family, as a way of honoring the deceased for their hard work in acquiring the inherited property. Furthermore, rotating the inheritance is intended to avoid conflicts that might arise in the future if the land were divided physically, due to the small size of the land. By rotating the inheritance, the effort to preserve the inheritance fosters harmony and peace among family members in the public sphere. This aligns with the goal of Maqasid al-‘Ammah in the concept of preserving dignity.

As previously mentioned, the rotating inheritance system can be seen as a fair distribution, where each heir receives an equal share of the inheritance, regardless of gender, through peaceful agreement among them. This is in line with what is stated in Article 183 of the Compilation of Islamic Law, which affirms that heirs may agree to a peaceful resolution in the distribution of the inheritance once each heir understands their share.²⁰

The practice of rotating inheritance distribution carried out by the residents of Pagelaran Village, Pagelaran Subdistrict, can be categorized as a delay in the division of inheritance. Several inheritance law experts in Indonesia argue that the delay in inheritance distribution can also be referred to as inheritance that has not yet been divided, deferred inheritance, or property left undivided. From these various definitions, it can be concluded that the delay in inheritance refers to the postponement of the inheritance division from the time of the decedent's death until the actual distribution of the property is carried out.²¹

²⁰ “Republik Indonesia Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Kompilasi Hukum Islam” (n.d.).

²¹ Sarwat, *Fiqih Mawaris*.

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The practice of inheritance distribution in Pagelaran Village, Pagelaran Subdistrict, does not involve a direct division of the decedent's property. Instead, the heirs utilize the inherited property on a rotating basis, as previously explained. As a result, the division of the inheritance is delayed, and the property remains collectively owned by the heirs. From the practice followed by the villagers, it is evident that they base their principles on mutual assistance and mutual consent in shared ownership, particularly with regard to land. This aligns with the following verses from the Qur'an:

“And Cooperate in righteousness and piety.” (Qur'an, Surah Al-Maidah:2)

"O you who have believed, do not consume one another's wealth unjustly or by unlawful means, or bribe [by] it to the rulers in order that [they might aid] you [to] consume a portion of the wealth of the people in sin, while you know [it is unlawful]." (Qur'an, Surah An-Nisa: 29)

Both verses indicate that the principle of mutual assistance found within them can serve as a general foundation for shared ownership of inherited property, especially land or agricultural land. These verses also suggest that it is possible to establish a joint ownership arrangement between heirs for property that has not yet been divided. In addition to the principle of mutual assistance, the principle of voluntariness or mutual consent (*ridha*) is also crucial in the delay of distributing undivided inheritance. These verses emphasize that wealth that is good, beneficial, and lawful, when acquired through actions that are mutually agreeable among individuals, results in positive outcomes from its utilization.²³

In addition to being supported by the word of Allah, this practice is also reinforced by existing legal regulations in Indonesia, specifically Article 189 of the Compilation of Islamic Law (KHI), which essentially addresses inheritance of agricultural land under two hectares, ensuring it remains intact and is used for the mutual benefit of the heirs. However, in the practice of rotational inheritance in Desa Pagelaran, Kecamatan Pagelaran, the local community has not yet realized that this practice is regulated under Article 189, paragraphs 1 and 2, of the KHI. The alignment between the local practice and the KHI shows that the community

²² Muhammad Syakroni, *Konflik Harta Warisan Akar Permasalahan Dan Metode Penyelesaian Dalam Perspektif Hukum Islam* (Yogyakarta: Pustaka Pelajar, 2007).

²³ Syakroni. 67.

does not divide land under two hectares directly. Instead, they maintain the unity of the land for it to be utilized alternately by the heirs through mutual consultation and reconciliation. The heirs have agreed not to divide and individually own the land, which does not contradict Islamic law.

Therefore, in substance, the practice of rotational inheritance in Desa Pagelaran, Kecamatan Pagelaran, is in accordance with Article 189 of the KHI, as well as Article 183, which states that the division of inheritance is justified if the heirs have agreed to a peaceful resolution after each recognizes their share. Because the inheritance land is less than two hectares, it becomes difficult to divide, leading to the agreement on the practice of rotational inheritance in Desa Pagelaran. This practice is deemed valid because each heir voluntarily participates in the arrangement, and it is done in a family-oriented or peaceful manner according to the consensus reached through mutual consultation.

Maqasid Sharia refers to the goals and objectives that the Shariah aims to achieve. Among these objectives, the focus is on safeguarding five essential aspects in Islam: the protection of religion, intellect, lineage, wealth, and life from any harm. In other words, the purpose of Maqasid Sharia is to bring ease and eliminate hardship in the practice of Islamic law, ensuring that its implementation contributes to the well-being and welfare of individuals and society.²⁴

Islamic law has provided a detailed and clear guideline for the distribution of inheritance. However, such a distribution may not always result in justice for the heirs, as the legal framework of the country emphasizes equality, while Islamic inheritance law, in most cases, upholds a patriarchal concept, giving a larger share to males than females. Therefore, inheritance matters are highly sensitive and often lead to disputes and conflicts.

In the context of inheritance, the heirs are individuals who share family ties. Even the smallest conflict within a family can lead to harm, and when the objectives of Maqasid Sharia are not achieved, it opens the possibility of harm to religion, intellect, and life. This further exacerbates the potential for negative consequences.

When closely examined and studied in detail, everything that Allah has decreed in the Qur'an and the Sunnah of Prophet Muhammad shows that every divine command has a specific purpose and will not be in vain. The concept of *maslahah* (public interest or benefit) is a key focus in Islamic law. Thus, when written laws are not relevant, Islam, with its vast scope of legal attention, emphasizes the welfare and benefit of its people. *Maslahah* is the main substance of Maqasid Sharia, and it is categorized according to its objectives.

The practice of rotational inheritance distribution in Pagelaran Village, Pagelaran Subdistrict, is carried out because of the agreement among the heirs to distribute the inheritance in a family-oriented manner, that is, by rotating the use of the inheritance without referring to the laws of *fara'id* (Islamic inheritance law). If disputes are undesirable, then reconciliation is the best solution. If a conflict arises and one of the parties in the rotational inheritance feels aggrieved, the agreement cannot be reached, which would be contrary to Maqasid Sharia. However, because the heirs have recognized their respective shares and then

²⁴ MA Sarwat Ahmat, Lc., *Maqashid Syari'ah*, 1st ed. (Jakarta Selatan: Rumah Fiqih Publishing, 2019).

reached a consensus, this practice is in accordance with the principles of Maqasid Sharia.

The practice of rotational inheritance utilization in Pagelaran Village aims to allow heirs to use the land or fields inherited from their parents alternately to meet their daily needs. The emergence of this inheritance distribution practice seeks to benefit the family and maintain good relationships among siblings, in line with the values of mutual assistance and mutual consent, which serve as the guiding principles in the rotational inheritance practice in Pagelaran Village.

From the explanation and analysis, supported by interview data and literature review to ensure its validity, this article categorizes the practice of rotational inheritance distribution in Pagelaran Village, Malang Regency, within the objectives of Islamic law, or Maqasid al-Shariah, which are:

- 1) Preserving faith is reflected in the heirs' awareness of their respective shares according to Islamic law. However, in order to prioritize fairness, they ensure that each heir receives their rightful portion by rotating the inheritance. Additionally, this rotational inheritance practice helps maintain the heirs' faith by ensuring equality of rights among them.
- 2) Preserving life is demonstrated through the involvement of all heirs in deciding how to divide the inheritance through mutual consultation. This fosters good communication, ensuring a shared understanding, with open, respectful, and empathetic attitudes between the heirs.
- 3) Preserving wealth means ensuring fair and equitable distribution of assets through the framework of inheritance law. This aligns with the practice of rotational inheritance in Pagelaran Village, which is decided by mutual agreement, ensuring that the inheritance is used effectively. Supported by the heirs' mutual consent, this practice fosters the desired justice.
- 4) Preserving intellect is reflected in the practice of not physically dividing the inheritance, but rather allowing the benefits to be shared, so that all family members can experience the fruits of the parents' hard work. This approach emphasizes that the division of inheritance should not only fulfill material needs but also address non-material aspects, such as justice, harmony, and the maintenance of family relationships.
- 5) Preserving lineage is realized through efforts to certify inherited land, ensuring legal certainty over ownership of the inheritance property. In addition, land certificates not only protect family assets but also clarify the status of ownership, preventing potential future disputes over inheritance land.
- 6) Preserving dignity is achieved by preventing conflicts within the family in the future. This effort aims to uphold the family's honor in the community by implementing effective conflict management within the family.

Thus, the practice of rotating inheritance in Pagelaran Village is appropriate and in line with Jasser Auda's Maqasid Sharia, as it upholds values of justice and the welfare of the heirs while also considering aspects of protection and family resilience.

Conclusion

Inheritance law in Indonesia has been summarized and established through the laws of faraidl and the Compilation of Islamic Law. The division of inheritance has also been detailed by Allah, with specific regulations ensuring that the process of inheritance distribution is carried out fairly for all heirs. However, inheritance matters are crucial and can be a source of both happiness and family disputes. Just as the lives and needs of individuals vary, so do the practices of inheritance, such as the rotating inheritance system used in Desa Pagelaran, Pagelaran District. Several conclusions can be drawn from the study of the rotating inheritance practice in Desa Pagelaran: (1) The practice of utilizing inheritance assets through rotation in Desa Pagelaran, Pagelaran District, is an alternative form of inheritance distribution adopted by the local community to resolve inheritance issues, especially regarding inherited land or agricultural land. Rather than directly dividing the land, the heirs take turns using and cultivating it, based on an agreement on the rotation schedule. This system was implemented due to the limited size of the land to be divided among many heirs, which led to the adoption of this rotating inheritance practice. Furthermore, the practice of rotating inheritance is also a step towards permanent inheritance distribution. This approach is taken to meet the costs of certifying the land in order to secure legal certainty for the owners in the future. The rotating inheritance system also allows the beneficiaries to derive benefits from the agricultural land to fulfill their daily needs. The duration of this practice, which may extend across multiple generations, depends on the agreement among the heirs. However, in general, this practice lasts for only one generation, as the costs for certifying the land are usually met, or sometimes it stops because heirs get busy with other responsibilities, leaving the land uncultivated. In such cases, the heirs may decide to sell the land, thus ending the practice of rotating inheritance. (2) Maqasid Sharia refers to the goals behind the implementation of Islamic law, and the inheritance law aims to provide justice and welfare for the heirs. Furthermore, the sharia requires ease in its practice, which is evident in the rotating inheritance system, as it eliminates the difficulties in distribution, especially when there is limited land but a large number of heirs. The fulfillment of sharia objectives in this practice lies in the guarantee of a fair distribution of the inheritance, facilitated by the mutual agreement among the heirs. Through an analysis based on Jasser Auda's perspective on the maqasid syariah, the rotating inheritance practice in Pagelaran Village, Pagelaran District, Malang Regency aligns with the goals of Islamic law and encompasses the primary objectives of *Maqasid al-'Ammah*, namely preserving faith, preserving life, preserving wealth, preserving intellect, preserving lineage, and preserving dignity.

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