

Distortion of Substantive Justice in Inheritance Distribution: An Islamic Legal Analysis of Unilateral Control over Undivided Estates

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Abstract:

This study examines substantive justice in the management of undivided estates within the framework of Islamic inheritance law. It highlights the gap between the formal recognition of inheritance rights and the actual realization of economic benefits received by heirs when inherited property remains under joint ownership (*musyā'*). The study aims to analyze the concept of justice based on the provisions of *farā'id* and to explain how unilateral control, use, or transfer of inheritance assets may distort substantive justice. A normative-empirical legal research method is employed, using conceptual and case-based approaches. Primary and secondary legal materials serve as the main sources, while empirical data from interviews with two informants are used as limited illustrations of practical conditions in the management of undivided estates. The findings indicate that justice in Islamic inheritance law extends beyond determining heirs and their prescribed shares. It also includes the physical distribution of inherited property and the fair allocation of economic benefits while the estate remains jointly owned. The case analysis reveals indications of substantive justice distortion, such as restricted access to inheritance information, unequal enjoyment of economic benefits, lack of transparency in asset management, and the absence of accountability mechanisms. Theoretically, the study proposes an analytical framework distinguishing three dimensions of inheritance justice: determination of rights, physical division of assets, and distribution of economic benefits from undivided estates. Practically, it emphasizes the need for transparency, full consent of heirs, and proportional distribution of benefits as essential elements of property protection within the concept of *maṣlahah mursalah*.

Keywords: substantive justice, Islamic inheritance law, undivided estate, *musyā'*, *maṣlahah mursalah*.



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Introduction

The inheritance system in Indonesia develops within a legal pluralism framework that encompasses the coexistence of three inheritance law systems, namely Islamic inheritance law, customary inheritance law, and Western civil inheritance law derived from the Civil Code (KUHPerdota/BW).¹ For Muslims, Islamic inheritance law functions as positive law implemented through various legal sources, including the Compilation of Islamic Law (Kompilasi Hukum Islam/KHI), which serves as one of the material legal references guiding judges within the Religious Courts in resolving inheritance disputes among Muslims. Therefore, the KHI cannot be categorized as part of Western civil law. Western civil inheritance law derived from the Civil Code recognizes two main elements, namely the individual element, which emphasizes personal rights over inherited property, and the social element, which reflects the function of property within familial and societal relations.² In Islamic inheritance law, the principle of individuality indicates that inheritance rights are attached to each heir as a personal right, with shares determined according to the provisions of *farā'id*. Meanwhile, the waiver or transfer of inheritance rights constitutes a separate legal act that must be carried out based on applicable legal mechanisms and provisions.

Conversely, customary inheritance law develops based on local values, traditions, and kinship systems that vary across different regions. As a living law within indigenous communities, inheritance rules are determined by each customary legal community in accordance with the genealogical (kinship) structure they adhere to, whether patrilineal (father-line descent), matrilineal (mother-line descent), or parental/bilateral (both father and mother lines), and may also be influenced by territorial associations (residential based communities) within certain customary societies.³ The existence of these three systems reflects the pluralistic character of Indonesian inheritance law, which allows for the application of different legal regimes depending on the legal subject's status, social environment, and applicable legal provisions.

¹ Lauhul Mahfudz, "Analisis Perbandingan Hukum Waris Perdata dan Hukum Kewarisan Islam di Indonesia," *Jurnal Hukum Keluarga Islam El-Qisth* 7, no. 2 (2024): 1–12, <https://doi.org/10.47759/Onj37310>.

² Harrys Pratama Teguh, *Teori dan Praktek Pembagian Harta Kekayaan Dalam Perkawinan : Metode Pembagian Harta Kekayaan Antara Yang Haq dan Bathil* (Jawa Tengah: CV. Sarnu Untung, 2022), 8. https://books.google.co.id/books?id=YsyREAAQBAJ&printsec=copyright&hl=id&source=gbs_pub_in_fo_r#v=onepage&q&f=false.

³ Harrys Pratama Teguh, *Teori dan Praktek Pembagian Harta Kekayaan Dalam Perkawinan : Metode Pembagian Harta Kekayaan Antara Yang Haq dan Bathil*, 5.

In Islamic inheritance law, the system is built upon individual and bilateral principles. The individual principle means that inheritance is distributed to be owned individually, so that each heir has personal rights over a share determined according to the provisions of *farā'id*. The bilateral principle indicates that inheritance rights can be acquired through both the paternal and maternal lineages. Thus, the Islamic inheritance system recognizes both kinship lines in a balanced manner as the basis for determining inheritance rights.⁴ These two principles serve as the foundation for the distribution of inheritance to ensure certainty of rights for every heir.

Normatively, Islamic inheritance law is an inheritance system that provides detailed regulations concerning the determination of each heir's share, explicitly set forth in the Qur'an through a number of verses collectively known as the *mawārīth* verses. The principal provisions on inheritance are found in Surah An-Nisa verse 11 and 12, which stipulate the shares of inheritance for children, parents, spouses, and other heirs based on kinship relations and specific conditions. In addition, provisions concerning the inheritance rights of siblings in the case of *kalālah* are regulated in Surah An-Nisa verse 176. The existence of these *mawārīth* verses demonstrates that Islamic inheritance law is clearly and directly grounded in the Qur'an. These provisions not only provide legal certainty regarding the rights of each heir but also aim to realize justice in the proportional distribution of estate. Accordingly, the *farā'id* system functions as a normative mechanism for the transfer of property that seeks to ensure certainty of heirs' rights, minimize potential disputes, and realize public welfare (*maṣlahah*) within society. The urgency of implementing inheritance provisions is also affirmed in a Hadith of the Prophet Muhammad (peace be upon him), narrated by Muslim: "*Abdul A'laa bin Hammad An-Narsi informed us, Wuhaib informed us, from Ibn Thawus, from his father (Thawus), from Ibn Abbas (may Allah be pleased with him), who said: The Messenger of Allah said: "Give the prescribed shares to those who are entitled to them, and whatever remains should go to the closest male agnate."*" (Sahih Muslim No. 4117).⁵ This Hadith emphasizes that the distribution of inheritance according to Islamic law is an obligation with strong normative foundations. Therefore, the *farā'id* system is designed to realize *maṣlahah*, maintain balance between rights and obligations among family members, and create a fair distribution of wealth among heirs.

The *farā'id* system is understood as a mechanism for the distribution of wealth based on the principle of proportionality between rights and economic responsibilities within the family. In Islamic inheritance law literature, the concept of balanced justice is understood as a principle that situates inheritance shares in relation to the structure of economic responsibilities regulated by the Sharia, rather

⁴ Amir Syarifuddin, *Hukum Kewarisan Islam di Indonesia* (Jakarta: Kencana, 2011), 25. https://books.google.co.id/books?id=5UuEAAAQBAJ&printsec=frontcover&hl=id&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=true.

⁵ Imam An-Nawawi, *Syarah Shahih Muslim*. (Jakarta: Darus Sunnah, 2009), 881.

than as a mathematical equality among heirs.⁶ From the perspective of *maṣlahah mursalah*, this arrangement can be understood as one of the mechanisms aimed at maintaining orderly family relations and protecting the economic rights of heirs.⁷ However, the relationship between inheritance distribution, economic responsibility, and family welfare cannot be assumed to be an automatic cause and effect relationship, because the realization of these objectives in practice is also influenced by various social, cultural, and economic factors within society. Therefore, justice in Islamic inheritance law should be understood not only in terms of the size of inheritance shares, but also in terms of the extent to which each heir's rights are recognized, protected, and can be effectively enjoyed in accordance with the intended objectives of the law.

Nevertheless, social reality shows that the implementation of Islamic inheritance law does not always proceed in accordance with its normative construction. In certain practices, the management and utilization of inherited property may experience distortions influenced by social, cultural, economic factors, and power relations within the family. Such conditions may result in not all heirs having equal access to information, management, or economic benefits derived from the estate. Therefore, issues of inheritance justice are not only related to the determination of shares under *farā'id*, but also concern how these rights are effectively realized in social practice.⁸ These conditions indicate that inheritance issues are not merely related to legal provisions on inheritance shares, but also involve how such rights are implemented in real social life.

Distortions in the implementation of inheritance rights become more apparent in productive estates that generate continuous economic benefits, such as rice fields, agricultural land, rental houses, and family businesses. In such types of property, inheritance issues are not only about determining shares, but also about control, management authority, and the distribution of economic benefits generated from undivided estates as objects of joint ownership among heirs. Since the death of the deceased, each heir obtains individual ownership rights over an ideal undivided share of the estate according to *farā'id*, even though physical division (*taqṣīm*) has not yet been carried out.⁹ In such circumstances, each heir also has the right to demand

⁶ Abdul Karim Hadjarati, Adi Sujanto and Papang Sapari, "Asas Keadilan Berimbang Dalam Penyelesaian Sengketa Pembagian Waris Menurut Hukum Waris Islam," *Jurnal Pro Hukum : Jurnal Penelitian Bidang Hukum Universitas Gresik* 11, no. 5 (2022): 541–557, <https://doi.org/10.55129/v11i5.2405>.

⁷ Syifa Mutiara Putri Heriandita, Farah Farouk Alwyni, Mohammad Izdiyan Muttaqin, and Mulawarman Hannase, "The Role of Islamic Inheritance Law with a Maqasid Al-Shariah Approach in Addressing the Challenges of Social Justice for Women," *AJIS: Academic Journal of Islamic Studies* 10, no. 1 (2025): 231–252, <https://doi.org/10.29240/ajis.v10i1.11931>.

⁸ Hafidz Taqiyuddin, "Penerapan Hukum Waris Islam Dalam Pembagian Harta Warisan di Masyarakat Pedesaan Indonesia : Tinjauan Literatur Sistematis," *Syaksia : Jurnal Hukum Keluarga Islam* 26, no. 2 (2025): 1–19, <https://doi.org/10.37035/syaksia.v26i2.12481>.

⁹ Rayi Kharisma Rajib dkk., "Perlindungan Hak Ahli Waris Terhadap Penguasaan Sepihak Harta Warisan (Studi Kasus Putusan Nomor 63/PDT.G/2024/PN PGP)," *Integrative Perspectives of Social and Science Journal (IPSSJ)* 3, no. 4 (2026): 1914–1920, <https://cibangsa.com/index.php/causa/article/view/9811>.

partition of the estate to terminate joint ownership and realize their ownership rights separately.

This concept can be understood through the distinction between *milk al-raqabah* and *milk al-manfa'ah* in Islamic commercial jurisprudence. *Milk al-raqabah* refers to ownership of the substance or principal asset, whereas *milk al-manfa'ah* relates to the right to obtain and enjoy the economic benefits generated by an asset. Therefore, ownership of an inheritance share does not automatically grant one heir the authority to unilaterally control or take all economic benefits. In joint ownership, the management and utilization of property must consider the rights and interests of all heirs proportionally.¹⁰ In practice, a gap may arise between ownership of the asset itself (*milk al-raqabah*) and the realization of economic benefits (*milk al-manfa'ah*) when management or benefit extraction is carried out unilaterally by one heir without regard to the rights of others. This condition shows that inheritance justice is not only about formal recognition of inheritance shares under *farā'id*, but also includes the realization of the right to participate in management, obtain economic benefits, and demand partition of the estate when joint ownership results in injustice.

This reality indicates that the practice of inheritance distribution in society is not always realized through the direct physical division of assets according to the prescribed shares of *farā'id*. In practice, it may instead be carried out through family deliberation, mutual agreement, or customary mechanisms after each heir's entitlement has been identified.¹¹ The existence of deliberation or agreement-based inheritance settlement is not inherently contrary to Islamic inheritance law. Such agreements may still be regarded as consistent with the principles of *farā'id*, provided that each heir's rights have been clearly identified and acknowledged in advance, all heirs receive adequate information regarding the assets and their value, and consent is given voluntarily without coercion, pressure, or manipulation by any party. Family deliberation is often used as a mechanism to maintain familial harmony while accommodating the socio-economic needs of heirs once their respective shares are clearly known.¹²

Issues of justice in inheritance practice arise when the processes of deliberation, decision-making, or estate management are not accompanied by transparency and consent based on adequate information (informed consent). This condition may be exacerbated by unequal power relations, where family members with economic strength, social influence, or control over the estate dominate decision-making processes, thereby limiting the freedom of other heirs to exercise their rights. From

¹⁰ Ade Vitria and Annisa Syafriani, "Konsep Hak Milik Dalam Ekonomi Islam," *Aghniya: Jurnal Ekonomi Islam* 5, no. 1 (2023): 114–130, <https://doi.org/10.30596/aghniya.v5i1.15414>.

¹¹ Herdiansyah dkk., "Praktik Pembagian Waris Berdasarkan Hukum Waris Islam (Studi Kasus Di Kelurahan Pekan Arba RT. 01/RW. 01)," *Jurnal Indragiri : Penelitian Multidisiplin* 4, no. 1 (2024): 40–46, <https://doi.org/10.58707/jipm.v4i1.725>.

¹² Wido Zuwika, Radina Mumtaza Ulya, Herianto, Eka Amba Wati, Badruz Zaman, and Suhairi, "Dinamika Hukum Kewarisan Di Era Modern: Tantangan Dan Relevansi Hukum Waris Islam," *JSHI: Jurnal Syariah Hukum Islam* 3, no. 2 (2024): 31–45, <https://doi.org/https://doi.org/10.47902/jshi.v3i2.459>.

the perspective of Islamic law, joint management of undivided inheritance can be justified as long as it is conducted based on the agreement of all heirs after each of them has understood their rightful shares according to *farā'id*. However, such practice becomes problematic when the management and utilization of inheritance are carried out unilaterally without involving all heirs, resulting in some heirs losing access to information about the assets, being excluded from decision-making, failing to receive proportional economic benefits, or being hindered from demanding partition of the estate (*taqsim*).¹³

This phenomenon indicates that contemporary inheritance problems are no longer limited to the distribution of legal ownership, but also involve the distribution of economic benefits and access to the management of inherited property. In the context of undivided productive estates, the protection of heirs' rights cannot be measured solely by the formal recognition of ownership status, but also by the extent to which each heir obtains proportional access to economic benefits, participates in the management of joint property, and has the opportunity to exercise the right to demand partition (*taqsim*) when joint ownership no longer ensures the fair realization of heirs' rights.¹⁴

Previous studies on inheritance issues can generally be classified into three main themes. First, Taqiyuddin's 2025 study focuses on the implementation of Islamic inheritance law in society and the factors influencing its application.¹⁵ This study uses a systematic literature review (SLR) of 32 studies from 2020–2024 to analyze the gap between the normative provisions of *farā'id* and inheritance practices in social reality. The findings show that although Islamic law provides a clear framework for inheritance distribution, its application is often influenced by local traditions and strong social structures that shape perceptions of justice and balance. However, the limitation of this study lies in its lack of specific discussion on post inheritance injustice, particularly unilateral control, management, and economic benefits of undivided productive estates. In contrast, this article emphasizes the gap between formal recognition of inheritance rights under *farā'id* and heirs' actual access to management and economic benefits of undivided estates.

Second, Lestari and Fatihah's 2024 study examines inheritance distribution through family deliberation, communication, and social factors affecting justice in inheritance processes.¹⁶ The findings show that open communication and

¹³ Enceng Iip Syaripudin and Fahmi Farhan Mubarak, "Tinjauan Hukum Islam Tentang Pemanfaatan Harta Waris Secara Bersama," *Jurnal Hukum Ekonomi Syariah* 4, no. 1 (2025): 32–39, <https://doi.org/10.37968/jhesy.v4i1.906>.

¹⁴ Dita Septiyani, Najih Abqori, and Arifuat Marzuki "Dinamika Pembagian Harta Warisan Berbasis Konsensus Keluarga: Studi Empiris Hukum Waris Islam," *Al-Adalah: Jurnal Syariah Dan Hukum Islam* 10, no. 1 (2025): 196–207, <https://doi.org/10.31538/adlh.v10i1.6491>.

¹⁵ Taqiyuddin, "Penerapan Hukum Waris Islam Dalam Pembagian Harta Warisan Di Masyarakat Pedesaan Indonesia : Tinjauan Literatur Sistematis."

¹⁶ Winda Lestari and Nadya Layla Fatihah, "Hukum Waris Dalam Islam : Distribusi Harta Warisan," *Civilia: Jurnal Kajian Hukum Dan Pendidikan Kewarganegaraan* 3, no. 2 (2024): 531–539, <https://jurnal.anfa.co.id/index.php/civilia/article/view/2689>.

deliberation can serve as an Islamic compliant mechanism of inheritance settlement, provided that all heirs are aware of their rights and give voluntary consent. However, this study primarily focuses on procedural mechanisms for reaching inheritance agreements and does not deeply examine post determination injustice, particularly regarding control, management, and distribution of economic benefits from undivided productive estates. In contrast, this article analyzes how substantive injustice may still occur even after inheritance rights have been determined under *farā'id*, especially when some heirs control the management and economic benefits of jointly owned property.

Third, Hikmiyyah and Fathul Ulum's 2025 study discusses justice in Islamic inheritance law through a *maqāṣid al-sharī'ah* approach and reinterpretation of family wealth distribution practices.¹⁷ Using a normative-critical method based on literature and case analysis, the study finds that substantive injustice may arise from unequal pre-inheritance distribution of wealth, such as gifts, education funding, and business capital, thus requiring consideration of *maslahah* in understanding family wealth distribution. However, it focuses more on pre-inheritance economic inequality and does not specifically address post-inheritance injustice related to control, management, and distribution of economic benefits from undivided productive estates. In contrast, this article analyzes substantive justice distortion after inheritance has opened, by identifying the gap between formal recognition of inheritance rights and heirs' actual realization of management and economic benefits.

Based on the above review, previous studies have significantly contributed to explaining the concept of justice in Islamic inheritance law, including the implementation of *farā'id*, principles of distributive justice, and mechanisms for resolving inheritance disputes. However, most studies remain focused on normative recognition and distribution of inheritance shares and have not deeply examined situations where legally recognized inheritance rights are not followed by actual access to management and economic benefits of undivided estates. Thus, there remains a research gap concerning the relationship between legal ownership and economic benefit in unilateral control of inheritance property.

To address this gap, this article proposes an analytical framework of substantive justice distortion that not only evaluates formal recognition of inheritance shares under *farā'id*, but also assesses whether heirs have access to information about the estate, consent to its management, receive proportional economic benefits, obtain accountability mechanisms, and have access to legal remedies to enforce their rights. From the perspective of Islamic law, inheritance involves not only determining heirs and their respective shares under *farā'id*, but also the physical partition of assets and the management and distribution of economic benefits while the estate remains in

¹⁷ Hikmiyyah and Fathul Ulum, "Keadilan Substantif Dalam Pembagian Waris Islam: Analisis Ketimpangan Distribusi Pra-Waris Dalam Keluarga Muslim," *Al-Qadlāya : Jurnal Hukum Keluarga Islam* 5, no. 1 (2025), <https://ejournal.stismu.ac.id/index.php/alqadlāya/article/view/2584>.

joint ownership (undivided estate). Initially, heirs and their shares are determined under *farā'id*.¹⁸ However, this determination is not always followed by physical division, particularly for productive assets that continue to be managed before partition.¹⁹ In such conditions, inheritance issues shift from determining shares to distributing economic benefits generated by undivided estates.

Therefore, substantive justice distortion in this study does not lie in the determination of heirs or calculation of shares, but in the utilization stage of inheritance when economic benefits are not proportionally accessible to all heirs. In the cases analyzed, undivided estates are managed collectively or controlled by certain parties. Such management is permissible as long as it is based on mutual consent (*tarāḍin*), agreement, and transparency among heirs. Problems arise when control and utilization are carried out without consent or without mechanisms ensuring equal access to economic benefits. Thus, the injustice studied is not related to the size of inheritance shares under *farā'id*, but to the gap between formal recognition of inheritance rights and the realization of economic benefits from undivided estates.

Based on this gap, this study aims to examine substantive justice distortion in unilateral control, utilization, and transfer of inheritance property, particularly in undivided estates. Using an Islamic legal perspective through substantive justice, the concept of *musyā'*, and *maṣlahah mursalah* especially the protection of wealth (*hiḏ al-māl*), this study argues that inheritance justice is determined not only by the establishment of heirs and shares under *farā'id*, but also by the fulfillment of heirs' rights to access, management, and proportional economic benefits. Accordingly, this study raises two main questions: (1) how the concept of justice in Islamic inheritance law is understood under *farā'id*, and (2) how unilateral control distorts substantive justice. Theoretically, this study distinguishes between the determination of heirs and shares, the physical partition of estates, and the distribution of economic benefits from undivided estates, showing that inheritance rights are not only formal but also involve actual access to economic benefits. Practically, it provides an analytical framework for judges, mediators, legal practitioners, and heirs in resolving inheritance disputes over productive undivided estates, ensuring that legal protection focuses not only on distribution of shares but also on fair and proportional distribution of economic benefits, thereby strengthening the understanding of substantive justice in Islamic inheritance law in line with *maṣlahah mursalah*.

Method

This study is a normative-empirical legal research that employs a conceptual approach to examine the concepts of substantive justice, distributive justice, and the

¹⁸ S Sakirman, "Konvergensi Pembagian Harta Waris Dalam Hukum Islam," *Al-Hurriyah: Jurnal Hukum Islam* 2, no. 1 (2017): 45–56, <https://doi.org/10.30983/alhurriyah.v2i1.261>.

¹⁹ Mahfudz, "Analisis Perbandingan Hukum Waris Perdata dan Hukum Kewarisan Islam di Indonesia."

principles of inheritance in Islamic law. In addition, it uses a case approach by analyzing two illustrative cases concerning the control and utilization of undivided inheritance property. These cases were obtained through information from informants who have direct knowledge of the events under study and are used in a limited manner to illustrate the gap between legal norms of inheritance and the practical management of estate property. The primary data in this study consist of legal materials obtained through library research, including primary legal sources such as the Qur'an, Hadith, and the Compilation of Islamic Law. Secondary legal materials include books, scholarly journal articles, research findings, and opinions of experts in both Islamic law and positive law, while tertiary legal materials include legal dictionaries, encyclopedias, and other relevant reference sources. In addition to library research, this study is also supported by limited field data obtained through unstructured interviews with two informants selected using purposive sampling based on their knowledge of the cases under study. This information is not used as primary empirical data nor as a basis for generalizing inheritance practices in society, but rather as an illustration of how issues of control and utilization of inheritance property may create a gap between normative inheritance rights and the realization of economic benefits. The analysis is conducted qualitatively through content analysis by identifying, classifying, and interpreting relevant legal materials and supporting information. The analysis is directed at assessing issues of justice in the management of undivided inheritance property from the perspective of Aristotelian distributive and corrective justice as well as the principle of *ḥifẓ al-māl* within the framework of *maṣlaḥah mursalah*

Results and Discussion

Substantive Justice in the Distribution and Utilization of Inheritance Property

In the Qur'an, the concept of justice in Islam is associated with several interrelated terms. The term *al-'adl* is explicitly used in QS. An-Nisā' verse 58 in the phrase "*wa idhā ḥakamtum bayna an-nās an taḥkumū bil-'adl*" which commands that all decisions concerning human rights must be based on justice (*bil-'adl*). According to al-Qurṭubī, this command is directed to judges, leaders, guardians, and anyone entrusted with authority to uphold justice in exercising their responsibilities.²⁰ Thus, the use of *al-'adl* in this verse shows that justice is not only a moral value but also a normative standard in legal decision-making and dispute resolution. In addition to *al-'adl*, the Qur'an also uses the term *al-qist*, which denotes upright and proportional justice. This term appears in QS. Al-Imrān verse 18, where Allah declares that there is no deity but Him, and that He upholds justice, as do the angels and people of knowledge. In this verse, *al-qist* relates to the testimony of Allah regarding His oneness and indicates that all His decrees are based on perfect justice.²¹ Meanwhile,

²⁰ Syaikh Imam Al Qurthubi, *Tafsir Al-Qurthubi Jilid 5* (Jakarta: Pustaka Azzam, 2008), 611.

²¹ Qurthubi, *Tafsir Al-Qurthubi Jilid 4*, 119.

in *Lisān al-‘Arab*, the term *qawwām* is defined as one who maintains, manages, and treats others well, while *qawam* (without emphasis and without additional letters) is interpreted as justice (*al-‘adl*).²² In QS. An-Nisā’ verse 34, *qawwām* refers to those responsible for managing, regulating, and protecting others. Therefore, the designation of men as *qawwām* over women in this verse does not directly denote equality-based justice, but rather indicates leadership, responsibility, and guardianship manifested through financial support, protection, and guidance in accordance with Islamic principles.²³

Based on these meanings, justice in Islamic legal thought is not understood as absolute equality, but as proportional placement of rights and obligations according to respective positions. This reflects the objective of achieving welfare (*maṣlahah*) and preventing inequality and harm through the principle of “placing something in its proper place” (*wad‘ al-shay’ fī mahallihi*).²⁴ Thus, justice encompasses all dimensions of human life relation with God, oneself, others, and the social environment.²⁵ In inheritance law, justice is not only about distributing shares according to *farā’id*, but also ensuring each heir’s right to access, control, and benefit economically from the estate according to their legal position. Therefore, justice in this study is used as an analytical framework to assess whether the control, utilization, and transfer of inheritance property occur proportionally or instead create inequality contrary to the objectives of Islamic legal welfare.

In Islamic inheritance law, the distribution system of *farā’id* cannot be understood as a fixed single pattern, such as the 2:1 ratio between males and females, but rather as a normative system that varies according to the structure of heirs, degrees of kinship, and textual provisions. In some cases, women may receive equal shares to men, greater shares, or even become the sole heir. Therefore, the Islamic inheritance system cannot be reduced to a single distribution pattern or a single factor such as financial responsibility differences, since such factors are better understood as *ḥikmah* (wisdom), not the sole determining ‘illah of inheritance rules.²⁶ Accordingly, the inheritance system must be understood comprehensively within the framework of textual evidence, *usul al-fiqh* principles, and proportional justice, where each rule is part of a structured legal system established by Islamic law. Ibn Qudamah in *al-Mughni* affirms that *farā’id* provisions are definitive legal rulings based on textual evidence and cannot be altered by subjective considerations outside Islamic law, but

²² Jamaluddin Muhammad Ibnu Mukram Ibnu Manzur al-Ifriqi Al-Mishri, *Lisan Al-Arabi* (Beirut: Dar al-Fikr, 1990), 3604-3605.

²³ Qurthubi, *Tafsir Al-Qurthubi Jilid 5*, 394.

²⁴ Mansari, Rahmad Hidayat, and Erha Saufan Hadana, “Hukum dan Keadilan dalam Dimensi Ilmu Hukum dan Hukum Islam,” *Journal of Dual Legal Systems* 1, no. 1 (2024): 17–27, <https://doi.org/10.58824/jdls.v1i1.127>.

²⁵ Rohidin, *Pengantar Hukum Islam* (Yogyakarta: Lintang Rasi Aksara Books, 2016), 23.

²⁶ Wido Zuwika, Radina Mumtaza Ulya, Herianto, Eka Amba Wati, and Badruz Zaman, “Dinamika Hukum Kewarisan di Era Modern: Tantangan dan Relevansi Hukum Waris Islam.”

must be understood within the framework of obedience to divine legislation.²⁷ In practice, inheritance law may intersect with the social conditions of heirs, which can be resolved through Sharia approved mechanisms such as deliberation (*ṣulḥ*) and mutual agreement, as long as they do not contradict textual provisions and fundamental principles of inheritance law.

In this context, an analytical framework is needed that explains not only normative distribution of rights, but also realization and restoration of rights in practice, which can be examined through Aristotele's theory of justice and the distinction between formal and substantive justice. Justice in Islamic inheritance law is fundamentally distributive because it focuses on proportional allocation of inheritance based on kinship, responsibility, and *farā'id* rules.²⁸ This concept corresponds with Aristotle's *Nicomachean Ethics*, which distinguishes distributive justice and corrective justice. Distributive justice concerns proportional allocation of rights and benefits, while corrective justice restores imbalance caused by improper control or utilization of rights.²⁹ In Islamic inheritance, distributive justice is reflected in the determination of inheritance shares, while corrective justice becomes relevant when deviations occur in control or utilization of estate property.

The relevance of corrective justice is particularly evident in undivided estates, where shares have been determined but assets have not yet been physically divided. In such cases, formal justice (recognition of shares) does not always correspond to substantive realization of rights. Therefore, the distinction between formal justice and substantive justice becomes crucial. Formal justice refers to recognition of inheritance rights according to Islamic law, while substantive justice concerns actual access to property, transparency in management, and proportional enjoyment of economic benefits.³⁰

In reality, inheritance disputes are more often related to control and utilization of property than to determination of shares. This indicates a gap between normative ownership and factual control, especially in undivided estates.³¹ Therefore, inheritance justice cannot be reduced to distribution of shares alone, but depends on effective realization of rights, including access to property, transparency of information, and economic utilization. The determination of *farā'id* shares is a normative prerequisite, but insufficient without effective implementation. Thus, the

²⁷ Ibnu Qudamah, *Al-Mughni* (Jakarta: Pustaka Azzam, 2007), 430-431.

²⁸ Syadza Nida Nafisyah and Devika Rosa Guspita, "Hukum Waris Islam: Keadilan Dalam Pembagian Harta Dan Penerapannya," *Journal of Dual Legal Systems* 1, no. 2 (2024): 137-152, <https://doi.org/10.58824/jdls.v1i2.233>.

²⁹ Aristoteles, *Nicomachean Ethics: Sebuah Kitab Suci Etika*, Terj. Embun Kenyowati (Jakarta: Teraju, 2004), 126.

³⁰ Edelia Triasty and Kurniati, "Filosofi Keadilan Dalam Pembagian Warisan Ditinjau Dari Perspektif Hukum Islam Dan Implikasinya Terhadap Keharmonisan Keluarga," *Al-Istinbath : Jurnal Ilmu Hukum Dan Hukum* 2, no. 1 (2025): 81-94, <https://doi.org/10.71242/8sfvjf82>.

³¹ Ahmad Fandika, Octa Fio Dila, and Dwi Noviani, "Transparansi Dan Keadilan Dalam Pembagian Harta Waris Menurut Hukum Islam Di Era Modern," *Student Scientific Creativity Journal (SSCJ)* 2, no. 3 (2024): 12-19, <https://doi.org/10.55606/sscj-amik.v2i3.3306>.

determination of *farā'id* shares constitutes a normative prerequisite; however, it is not sufficient to achieve substantive justice without the effective implementation of rights. This condition may ultimately hinder the realization of public welfare (*maṣlahah*), the protection of heirs' rights, and the sustainability of family well-being.³²

Substantive justice in this context does not mean altering *farā'id* rules, but ensuring effective enforcement of established rights. Therefore, reform efforts focus on implementation aspects such as estate management, distribution of benefits, compensation for rights violations, and restoration of heirs' access to their rightful property. Thus, substantive justice operates not at the level of redefining inheritance shares, but at optimizing the realization of rights in practice.³³

This issue is important because Islamic inheritance law aims not only to regulate the transfer of ownership but also to ensure welfare and protection of legitimate heirs' rights. From the perspective of *maṣlahah mursalah* as explained by Imam al-Ghazali in *al-Mustasfā*, *ḥifẓ al-māl* includes protection of acquisition, utilization, and fair distribution of wealth.³⁴ In inheritance, justice does not end with determining shares, but lies in effective realization of rights, especially in undivided estates where gaps arise between legal ownership and factual control. Thus, *ḥifẓ al-māl* requires proportional access and utilization of inheritance by all heirs.³⁵

Based on this framework, this study uses *ḥifẓ al-māl* as the primary normative foundation, strengthened by Aristotele's distributive and corrective justice as analytical tools. Distributive justice explains the legitimacy of *farā'id* distribution, while corrective justice assesses the need for restoration when imbalance occurs in control or benefit. Therefore, distortion of inheritance justice is identified not only from violations of normative distribution, but also from failure to ensure heirs' access to property and economic benefits.

The Status of Undivided Inheritance Property in Islamic Law

In Islamic inheritance law, *tirkah* refers to the entirety of the deceased's estate that becomes the object of inheritance after deducting prior obligations, namely the expenses incurred during illness until death, funeral and burial costs (*tajhiz*), debt repayment, and the execution of valid wills.³⁶ This provision is in line with Article

³² Arif Fikri, Rudi Santoso, and Miswanto, "Analisis Sistem Pembagian Waris DuaBandung Satudalam Perspektif Maqasid Syariah: Keadilan Dan Kesejahteraan Dalam Warisan Keluarga," *Bulletin of Community Engagement* 4, no. 3 (2024): 481–489, <https://doi.org/10.51278/bce.v4i3.1530>.

³³ Thomas Febria, Beatrix Benni, and Dendi Kurniawan, "Relevansi Asas Keadilan Dan Kepastian Hukum Dalam Pembagian Warisan Menurut Hukum Islam Dan Hukum Positif Indonesia," *Jurnal Legalitas Indonesia* 3, no. 2 (2025): 80–95, <https://doi.org/10.58819/jle.v3i2.174>.

³⁴ Rohidin, *Pengantar Hukum Islam*, 35.

³⁵ Rohidin, *Pengantar Hukum Islam*, 40.

³⁶ Mohammad Syaifuddin, *Fiqh Mawaris Dan Munakahat : Telaah Komprehensif Hukum Keluarga Islam Berdasarkan Al-Qur'an Dan Sunnah* (Jawa Tengah: Penerbit Nasya Expanding Management, 2026), 46. https://www.google.co.id/books/edition/Fiqh_Mawaris_dan_Munakahat/lbCEQAAQBAJ?hl=id&gbpv=1.

171(e) and Article 175(1) of the Compilation of Islamic Law (KHI), which affirm that inheritance consists of the deceased's estate after all attached obligations have been settled.³⁷ After these obligations are fulfilled, ownership of the estate is transferred to the heirs according to the provisions of *farā'id*.³⁸ However, if physical partition (*taqsīm*) has not yet been carried out, the estate remains in a state of joint ownership (*musyā'*), meaning that each heir holds a proportional ideal share even though the assets have not been physically separated. In such circumstances, any use of the estate by one heir prior to partition must be accompanied by accountability and proportional calculation of economic benefits to other heirs as a form of protection of ownership rights and prevention of injustice.³⁹ This is consistent with the concept of *syirkah al-milk*, namely joint ownership arising when two or more persons simultaneously acquire rights over a property, including inheritance or bequest.⁴⁰ Therefore, any action concerning the estate must take into account and obtain the consent of all heirs according to their respective shares and must not cause harm (*lā ḍarar wa lā ḍirār*).

Normatively, Article 183 of the Compilation of Islamic Law (KHI) stipulates that heirs may reach a mutual agreement in distributing inheritance after each party is aware of their respective shares. Article 188 grants each heir the right to request partition if joint ownership no longer ensures protection of their rights. In addition, Article 189 acknowledges the possibility that certain inherited assets may be retained and utilized collectively for the benefit of all heirs.⁴¹ From the perspective of *fiqh muamalah*, any utilization of inheritance property, including leasing or transfer, must be based on the consent of all heirs as co-owners. Unilateral actions without permission not only violate the principle of *musyā'* but also result in the loss of some heirs' rights to economic benefits.⁴² Accordingly, the management of undivided inheritance must ensure the protection of the rights and interests of all heirs in proportion to their respective shares.

Management of inheritance by one heir is not inherently contrary to Islamic law if conducted in good faith, known or approved by other heirs, and accompanied by transparent accountability regarding economic benefits obtained. Conversely, exclusive control and utilization that prevents other heirs from accessing information, management, or economic benefits may lead to distortion of substantive justice. From the perspective of Aristotele's corrective justice and the objective of wealth

³⁷ Kementerian Agama RI, *Kompilasi Hukum Islam Di Indonesia* (Jakarta, 2018), 88-90. https://upload.wikimedia.org/wikipedia/commons/4/48/KHI_id.pdf.

³⁸ Joko Widodo, Moh. Yasir, and M. Ridwan Al Murtaqi, "Sistem Pembagian Harta Waris Di Indonesia Berdasarkan Hukum Islam Dan Hukum Adat," *Asy-Syari'ah: Jurnal Hukum Islam* 9, no. 2 (2023): 132–154. <https://doi.org/10.55210/assyariah.v9i2.948>.

³⁹ Mochamad Icksan, "Pengaturan Pembagian Harta Warisan Terhadap Objek Waris Yang Belum Dibagi Menurut Hukum Adat," *Hukmy Jurnal Hukum* 2, No. 1 (2022): 5. 2, no. 1 (2022): 1–13, <https://doi.org/10.35316/hukmy.2022.v2i1.1-13>.

⁴⁰ Ismail MBA, *Perbankan Syariah* (Jakarta: Kencana, 2011), 177.

⁴¹ RI, *Kompilasi Hukum Islam Di Indonesia*, 97.

⁴² Sayyid Sabiq, *Fikih Sunnah* 5 (Jakarta Selatan: Cakrawala Publishing, 2015), 262.

protection (*ḥifẓ al-māl*), such imbalance must be remedied through fair mechanisms, such as proportional distribution of proceeds, compensation for exclusive use, financial reporting (*accounting*), or calculation of benefits at the time of estate partition (*taqṣīm*).

Delays in the distribution of inheritance in society are often caused by several factors, such as lack of deliberation among heirs, efforts to preserve family productive assets, maintaining family harmony, failure to reach agreement among heirs, or the presence of heirs who are not legally competent, resulting in joint estate management.⁴³ From the perspective of Islamic law, delaying inheritance distribution is permissible as long as it does not eliminate the ownership rights of heirs, which arise upon the opening of succession. As stated by Syaikh Muhammad Mukhtar al-Shinqiti: “*Those who manage inheritance property, such as the eldest brother, uncle, or others, are not allowed to delay distribution without a valid Sharia excuse or the consent of the heirs. If all heirs consent, then it is their right. There is no problem in keeping the inheritance undivided even for years, as long as they are willing, because the property belongs to them*”.⁴⁴ Therefore, delay is only justified when there is a valid Sharia excuse (*‘udhr shar‘i*), such as uncertainty regarding an heir’s share, or based on the free, informed consent of all heirs. In such cases, the estate may remain in joint ownership (*musyā‘*) and be utilized collectively. This principle is also consistent with KHI provisions allowing joint ownership by mutual agreement.⁴⁵ However, delay must not cause harm (*ḍarar*) to any heir, including minors or legally incapacitated heirs whose interests must be protected through guardianship or legal representation.

In socio-legal context, long term delays in inheritance distribution may lead not only to family conflict but also to concrete legal vulnerabilities. These include unclear ownership status, unauthorized control or transfer of assets, individual claims over inheritance property, loss of evidence, and lack of transparency in management. As a result, disputes among heirs may arise, the value of the estate may decline, family relationships may deteriorate, and administrative difficulties may occur in managing inheritance assets.⁴⁶

These conditions show that inheritance issues are not limited to the normative determination of shares under *farā’id*, but also involve the realization of rights over undivided estate property. Problems arise when one heir exclusively controls and utilizes the estate without consent, transparency, or distribution of benefits to other

⁴³ Bambang Edi Tilarsono, Husnul Yaqin, Amri, “Tinjauan Hukum Waris Islam Dalam Penundaan Pembagian Harta Warisan (Studi Kasus Di Kelurahan Koya Timur, Distrik Muara Tami, Kota Jayapura),” *Al-Aqwal : Jurnal Kajian Hukum Islam* 1, no. 1 (2022): 17–35, <https://doi.org/10.53491/alaqwal.v1i1.278>.

⁴⁴ Ammi Nur Baits, *Pengantar Ilmu Waris* (Yogyakarta: Pustaka Muamalah Jogja, 1441 H), 112-113.

⁴⁵ Bambang Edi Tilarsono, Husnul Yaqin, and Amri, “Tinjauan Hukum Waris Islam Dalam Penundaan Pembagian Harta Warisan (Studi Kasus Di Kelurahan Koya Timur, Distrik Muara Tami, Kota Jayapura).”

⁴⁶ Firly Salsabila Zen, Irghi Imran Amry, and Fikri Ziddan Rufi’i, “Analisis Hukum Dan Dampak Penundaan Pembagian Waris Dalam Perspektif Hukum Islam,” *SANKSI 2026 : Seminar Nasional Hukum, Sosial Dan Ekonomi* 5, no. 1 (2026): 511–22, <https://jurnal.umsu.ac.id/index.php/sanksi/article/view/30386>.

heirs. This creates an imbalance in economic benefit distribution, as profits derived from the estate are not enjoyed proportionally according to each heir's rights. Therefore, corrective mechanisms are needed, such as proportional distribution of returns, compensation (*ta'wīd*) for exclusive use, mandatory reporting and accountability (*accounting*), or acceleration of estate partition (*taq̄sīm*).⁴⁷ These measures are in line with the principles of corrective justice and the objective of *ḥifẓ al-māl* within *maṣlahah mursalah*, which require not only normative recognition of ownership rights but also fair and effective distribution of benefits among all heirs.

Distortion of Substantive Justice in Unilateral Control of Inherited Property Practices

Distortion of substantive justice in inheritance is understood as a condition in which inheritance rights that have been normatively recognized under Islamic law are not followed by a proportional realization of economic benefits for all heirs,⁴⁸ thereby creating a gap between legal entitlement and the actual realization of rights (economic realization of rights). In this analysis, economic benefits consist of three components, namely gross benefits, expenses, and net benefits, which should be distributed proportionally among all heirs. The distortion does not only include exclusive control over inherited property, but also the inability of some heirs to access the distribution of net benefits. Its operationalization includes four indicators: lack of awareness of inheritance rights, non-receipt of net benefits, absence of management transparency, and lack of distribution accountability.

Case Findings: Informant 1

To protect the confidentiality of the parties involved, this study uses the code Informant 1 and does not disclose the names or specific locations of the parties. The case occurred in District X, Province Y, and was obtained through an unstructured interview conducted in June 2025. Based on the interview with Informant 1, it is known that the decedent (the mother) and her husband passed away, leaving two sons as heirs. The inherited property subject to dispute was a house forming part of the undivided estate (*boedel waris*) that had never been partitioned among the heirs. Based on the composition of heirs, each child is, in principle, entitled to an equal share of the inheritance left by both parents.

According to the informant, approximately one year after the mother's death and one hundred days after the father's death, the house was sold to a third party by another sibling. The informant stated that they were not informed of the planned sale and only became aware of the transaction after the property had already been transferred to the buyer. The informant also stated that no family deliberation

⁴⁷ Muhammad Amin Fauzi, Yusuf Ausiandra, and Felicitas Sri Marniati, "Perlindungan Hukum Bagi Ahli Waris Terhadap Pembebanan Hak Tanggungan Terkait Boedel Warisan Atas Harta Bersama Yang Belum Dibagi," *Jurnal of Legal Research* 5, no. 2 (2023): 83–112, <https://doi.org/0.15408/jlr.v4i6.30495>.

⁴⁸ Chairul Aman, "Keadilan Substantif Dalam Penetapan Ahli Waris Keluarga Poligami Di Pengadilan Agama Indonesia," *PILAR KEADILAN: Journal of Law and Justice* 1, no. 1 (2025): 1–11.

(consultation) was held, no consent was requested, and no documents related to the transfer were ever signed. Furthermore, the proceeds from the sale were not distributed to all heirs, and there was no explanation regarding the transaction value or the use of the funds obtained from the sale.⁴⁹ Because the informant did not know the sale value, the amount of economic benefit obtained by the selling party, nor the extent of loss suffered by the informant, these could not be empirically verified in this study.

Based on the interview findings, the main issue in this case does not lie in the inheritance status of the parties, but rather in the management and utilization of economic benefits derived from the inherited property prior to its distribution among the heirs. The inherited house was transferred to a third party without the involvement of all heirs, while information regarding the sale proceeds and their use was unavailable to the informant. When assessed using the indicators established in this study, several relevant elements were identified. First, there is no evidence of consent or agreement from all heirs prior to the transfer of the inherited house. Second, there is a lack of transparency regarding the sale process and the management of the proceeds. Third, the informant stated that they did not receive any portion of the economic benefits from the transaction despite having a normative inheritance right. Fourth, there is no reporting or accountability mechanism explaining the sale value, fund usage, or the calculation of each heir's share. These findings indicate a gap between formally recognized inheritance rights and the actual realization of economic benefits received by the heirs. In this case, joint ownership of the inheritance remains normatively valid, yet the economic benefits arising from asset transfer are not proportionally accessible to all heirs. Based on the operational indicators used in this study, this case indicates a distortion of substantive justice in inheritance management.

Case Findings: Informant 2

Based on an unstructured interview with Informant 2, a family member familiar with the inheritance management case under study, it was found that one heir only became aware of their inheritance rights in 2026. The right concerned a share in rice field land derived from the estate of the decedent's parents. Prior to obtaining this information, the heir was unaware of their entitlement to the inherited asset and had never received any economic benefits generated from its management. According to the informant, the economic benefits generated from the management of the rice field during that period were never distributed to the relevant heir. At the time of the study, the inheritance status had been acknowledged by the family, ownership documents had been processed under the heir's name, and there was a family agreement to exchange the asset for another parcel of land with higher economic value.⁵⁰

⁴⁹ Ibu OV (Kakak), Wawancara (Malang, 15 Juni 2026)

⁵⁰ Bapak AN (Paman/ Ahli Waris), Wawancara (Malang, 15 Mei 2026)

Based on the research indicators, a gap was identified between inheritance status and the realization of economic benefits received. Several indicators were observed. The first concerns access to inheritance information. The informant stated that the heir only became aware of their rights in 2026, despite the inherited asset having long existed and been utilized. This indicates that access to inheritance information was not evenly available to all rightful heirs, preventing the heir from knowing, supervising, or participating in decision-making related to the asset. The second indicator relates to the distribution of economic benefits. The informant stated that during the period prior to awareness of the inheritance right, the heir did not receive any economic benefits from the management of the rice field. Although this study did not obtain quantitative data on harvest yields or profits, the absence of benefit distribution indicates that normative recognition of inheritance rights was not followed by actual economic realization. The third and fourth indicators concern transparency and accountability in asset management. Based on the information obtained, there was no adequate explanation regarding the economic results of the rice field's management during the period in which the inheritance right was not yet known. Furthermore, no reporting or accountability mechanism existed to allow the heir to determine the economic outcomes generated from their share of the asset. These findings demonstrate that the gap between formal inheritance rights and economic realization does not always arise from exclusive control of assets by one heir. In this case, the gap emerged due to limited access to information regarding inheritance rights, which prevented the heir from realizing economic benefits from their share during a certain period. Although at the time of the study there was recognition of rights, administrative structuring of ownership, and a family agreement regarding future asset utilization, these findings show that fulfillment of inheritance rights is not only related to recognition of heir status, but also to access to information and the economic benefits attached to those rights.

Table 1. Indicators of Substantive Justice Distortion in Inheritance Asset Management

No	Indicator of Distortion	Case of Informant 1	Case of Informant 2	Analytical Interpretation
1	Access to inheritance information	No information regarding the sale of estate assets was disclosed	Awareness of inheritance rights emerged at a delayed stage	Indicates information asymmetry among heirs
2	Consent/ <i>shūrā</i> (consultation) among heirs	No collective consent from all heirs was obtained	Excluded from the initial stage of asset management	Breach of the principles of <i>shūrā</i> (consultation) and mutual consent (<i>tarāḍin</i>)

3	Asset control and management	Assets unilaterally controlled and sold	were and	Assets managed by other parties without active involvement	were by active	Indicates unilateral control and potentially unlawful appropriation
4	Distribution of economic benefits (net benefits)	Did not receive proceeds from asset sale	from	Did not obtain benefits from agricultural land management	from	Reflects unequal distribution of economic benefits among heirs
5	Transparency and accountability	No reporting regarding asset sale or use of funds	asset management	No reporting on asset management outcomes	and	Absence of transparency and accountability mechanisms

Source: Primary data from interviews with Informant 1 and Informant 2

In this empirical study, practices were identified that indicate a distortion of substantive justice, namely the unilateral control and transfer of inherited property without the consent of all heirs.⁵¹ This issue is not only related to the non-implementation of estate distribution in accordance with *farā'id* principles, but also arises at the stage of managing and utilizing the estate prior to its final partition. In both cases examined, inheritance rights had been normatively established since the opening of succession; however, not all heirs had equal access to the economic benefits derived from the inherited assets.⁵²

In the first case, the indicator of collective consent among heirs was not fulfilled, as the management of the inherited property was carried out by one heir without the explicit approval of the other heirs. The transparency indicator was also not satisfied, as there were no reports or information regarding management practices and economic outcomes during the period of control. Furthermore, the benefit distribution indicator showed non fulfillment, since economic returns from land and agricultural assets were never shared with the other entitled heirs. In addition, the accountability indicator was absent, as no mechanism of responsibility toward the other heirs was established.

Meanwhile, in the second case, a different pattern of imbalance emerged. The collective consent indicator could not be formally established due to limited access to information among some heirs, indicating weaknesses in the collective consent mechanism. The transparency indicator was also inadequately fulfilled, as information regarding the status and outcomes of estate management was delayed or unavailable. This condition affected the optimization of the benefit distribution indicator, as heirs did not receive a proportionate share of economic benefits.

⁵¹ Fatia Nuriza and Wiwiek Wahyuningsih, "Akibat Hukum Terhadap Harta Warisan Yang Dijual Belum Dibagi Waris (Putusan Nomor 0406/PDT.G/2013/PA PRA)," *Jurnal Private Law Fakultas Hukum Universitas Mataram* 3, no. 3 (2023): 630–638, <https://doi.org/10.29303/prlw.v3i3.3412>.

⁵² Joko Widodo, Moh. Yasir, "Sistem Pembagian Harta Waris Di Indonesia Berdasarkan Hukum Islam Dan Hukum Adat."

Moreover, the accountability indicator was ineffective due to the absence of reporting mechanisms that would allow verification of estate management. These findings confirm that the analysis of justice in inheritance should shift from merely focusing on formal distribution toward a comprehensive evaluation of estate governance, which determines the extent to which heirs' economic rights are genuinely realized.

The differences between the two cases further demonstrate that distortion of substantive justice in inheritance may occur through two main mechanisms, namely asset domination by a single party and information asymmetry that hinders the realization of heirs' economic rights. Both result in an imbalance between normative ownership and the distribution of economic benefits.

From the perspective of Islamic law, such practices are not permissible because undivided inheritance property is considered jointly owned (*musyā'*) by all heirs. Consequently, any act of management, utilization, or transfer of inheritance property must be conducted with the consent of all entitled parties. Therefore, arguments based on having cared for the parents, contributing economically, or perceiving a greater entitlement to family assets cannot justify unilateral control or transfer of inheritance, unless supported by a valid gift (*hibah*), bequest (*waṣiyyah*), or legally recognized agreement.⁵³ Nevertheless, contributions in the form of caregiving, management, or financial expenditures by one heir do not automatically increase their inheritance share, but may give rise to separate legal claims outside the inheritance distribution mechanism, such as reimbursement (*istirdād*), debt settlement, management fees (*ujrah*), or other entitlements based on mutual agreement, without altering the shares prescribed under *farā'id*.

Both cases demonstrate that distortion of substantive justice in inheritance is not merely related to unclear estate distribution, but also arises in the practices of controlling and managing the estate (*boedel waris*) in ways that fail to ensure proportional access and distribution of economic benefits to all heirs. Although, normatively, all heirs hold rights over the decedent's estate, in practice, management may proceed without consent, transparency, and accountability, thereby obstructing the realization of economic rights.⁵⁴

From the perspective of Islamic law, inheritance property classified as *musyā'* requires the consent of all heirs in every act of control and transfer, based on the principle of mutual consent (*tarāḍin*) and the prohibition of unlawful appropriation of wealth (*al-bāṭil*) as emphasized in Qur'an Al-Baqarah verse 188 and An-Nisā' verse 29. Furthermore, within the framework of *maqāṣid al-sharī'ah*, such practices undermine the protection of property (*ḥifẓ al-māl*) due to the unequal distribution of economic benefits among heirs. In addition, inequality in estate management may

⁵³ Setio Prabowo, M. Sudirman, and Cicilia Julyani Tondy, "Perlindungan Hukum Bagi Ahli Waris Terhadap Harta Warisan Yang Beralih Tanpa Persetujuan Ahli Waris," *Jaksa : Jurnal Kajian Ilmu Hukum Dan Politik* 1, no. 3 (2023): 63–70, <https://doi.org/10.51903/jaksa.v1i3.1346>.

⁵⁴ Muhammad Amin Fauzi, Yusuf Ausiandra, "Perlindungan Hukum Bagi Ahli Waris Terhadap Pembebanan Hak Tanggungan Terkait Boedel Warisan Atas Harta Bersama Yang Belum Dibagi."

also disrupt family harmony (*hiḥẓ al-nasl*), particularly when disparities arise in access to information and economic benefits among heirs.

Therefore, justice in Islamic inheritance law cannot be understood solely as the formal implementation of estate distribution according to *farā'id* principles, but must also be realized through a fair, transparent, and proportionate distribution of economic benefits to all heirs according to their respective shares. This understanding aligns with the concept of proportional justice in Islamic inheritance law, which emphasizes that justice is not limited to formal entitlement distribution, but extends to the realization of welfare (*maṣlahah*) and the protection of heirs' interests as legal subjects.⁵⁵ Operationally, this principle may be implemented through mechanisms such as transparent inventory and recording of estate assets, joint management based on agreements among heirs, proportional distribution of net proceeds, compensation for exclusive use, and dispute resolution options through mediation, partition, joint sale of estate assets, or litigation in the Religious Court as a last resort. Accordingly, strengthening legal awareness, ensuring transparency in estate management, and providing effective dispute resolution mechanisms constitute essential instruments to ensure the realization of substantive justice in inheritance practice, which does not remain limited to formal aspects but also guarantees the actual distribution of economic benefits to all heirs.

Conclusion

This study demonstrates that justice in Islamic inheritance law cannot be understood merely as the determination of heirs and their shares based on the provisions of *farā'id*. The inheritance process also encompasses the physical partition of estate assets (*partition*) as well as the distribution of economic benefits while the estate remains in a state of joint ownership (undivided estate). From the perspective of substantive justice and *maqāṣid al-sharī'ah*, particularly *hiḥẓ al-māl*, the fulfillment of inheritance rights is not solely determined by the formal recognition of inheritance shares, but also by the realization of fair access to the economic benefits generated from the inherited property. Accordingly, justice in inheritance requires an integration between normative recognition of rights and the proportional realization of economic benefits for all heirs.

The analysis of the two cases shows that unilateral control and management of inherited property may distort substantive justice. In the first case, the distortion occurs through the transfer of inherited assets without the involvement of all heirs, resulting in non proportional distribution of economic benefits. In the second case, the distortion arises from limited access to information, which prevents one of the heirs from enjoying the economic benefits derived from the inheritance to which they are entitled. These findings indicate that substantive injustice in inheritance may

⁵⁵ Ramadhita, "Keadilan Proporsional Dalam Pembagian Waris Anak Angkat," *De Jure, Jurnal Syariah Dan Hukum* 4, no. 2 (2012): 123–135, <https://doi.org/10.18860/j-fsh.v4i2.2982>.

emerge when the management of undivided estate assets is not accompanied by consent, transparency, accountability, and fair distribution of benefits. Theoretically, this study contributes by distinguishing three interrelated stages in inheritance, namely the determination of heirs and shares, the physical partition of estate assets, and the distribution of economic benefits from undivided inheritance property.

Practically, these findings emphasize the importance of transparent, participatory, and accountable estate management in order to prevent disputes among heirs, particularly in productive assets that remain under joint ownership. However, this study has limitations in that it employs a normative approach supported by two case illustrations; therefore, it is not intended for empirical generalization or causal explanation of determining factors. Accordingly, future research is recommended to adopt a socio-legal or empirical approach with a broader range of cases to further examine the various factors influencing the realization of substantive justice in the management of undivided inheritance property.

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