

De Jure: Jurnal Hukum dan Syar'iah

Vol. 14, No. 2, 2022, p. 195-210

ISSN (Print): 2085-1618, ISSN (Online): 2528-1658

DOI: <http://dx.doi.org/10.18860/j-fsh.v14i2.15238>

Available online at <http://ejournal.uin-malang.ac.id/index.php/syariah>

The Principle of *Segendong Sepikul* in the Inheritance Distribution System of the Muslim Community from the Perspective of Multidisciplinary Studies

Nur Alfy Syahriana

UIN Maulana Malik Ibrahim Malang, Indonesia
nuralfysyahriana@gmail.com

Zaenul Mahmudi

UIN Maulana Malik Ibrahim Malang, Indonesia
zenmahmudi@syariah.uin-malang.ac.id

Received: 2022-01-19	Revised: 2022-09-30	Published: 2022-12-30
----------------------	---------------------	-----------------------

Abstract:

This research was motivated by the researcher's interest in the principle of *segendong sepikul* which is applied in the Muslim community of Kandangtepus Village, Lumajang Regency, East Java, in distributing the inheritance. The purpose of this article is to describe the practice of the principle of *segendong sepikul* in the inheritance distribution model by the Muslim community of Kandangtepus Village. In the light of that, the researcher analyzes the said practice by using a multidisciplinary study in the present juridical-empirical research. Analyzed from the juridical-normative side, this practice is not in accordance with the provisions on the distribution of inheritance as found in the Sunni jurisprudences and the Compilation of Islamic Law. From a sociological perspective, this practice is appropriate with principles of justice according to Gustav and the concept of *al-islah* (reconciliation), as one of the teachings of Islam. Finally, the practice is likewise appropriate with the principles of Human Rights as it gives the person's rights according to the degree of the responsibility they carry.

Keywords: Islamic inheritance; adat law; local wisdom.

Introduction

The inheritance distribution model as applied in the Muslim community of Kandangtepus Village, Lumajang Regency, East Java, which deviates from the Quranic verses, is associated with the time of the inheritance distribution, the family that receives the inheritance (the heirs), and the quantity of inheritance to be distributed. However, the word "deviant" in this context requires deeper analysis. It

is vital to explore the underlying background of the Muslim community in Kandangtepus Village in terms of distributing inheritance based on their deeply ingrained culture. In that regard, it is possible to determine if their practice is completely contradictory to the guidance of the Qur'an or whether there is another beneficial purpose that they aim to achieve.

It is undeniable that all of the Islamic Sharia based on the Qur'an, including inheritance law, is built upon the notions of justice and prosperity. However, these two values cannot be isolated from the *asbab al-nuzul* or the context of the revelation of a verse at the time. The value of justice and prosperity in present days is undoubtedly different from the time of the revelation of the verses in Qur'an to the Prophet. In certain cases, the distribution of inheritance in Islam appears to contradict the principles of justice, prosperity, and equality, even though these are the universal Islamic principles that should not be neglected.¹

Segendong Sepikul is one of the principles of a inheritance distribution that is widely used by the Muslim community of Kandangtepus Village in upholding the value of justice and prosperity. Essentially, *Segendong Sepikul* is the principle of an inheritance distribution that is widely applied by the Javanese people. In practice, the person who has a lighter burden (holding) in their family life will receive a smaller share of inheritance than the person whose family suffer a heavy burden or responsibility (carrying). In this notion, distributive justice is considerably clearer and more assertive since the portion of person's inheritance is suited to the burden that they have undertaken. This concept additionally does not address the gender identity as specified by Fiqh. When the responsibilities carried out are relatively large, consequently it is highly conceivable for female heirs to receive a considerably bigger part of the inheritance than the male heirs in return. When Islam applies the proportion of two parts for the male and one part for the female, this notion on the other hand, applies the two parts for the person carrying, and one part for the person holding.

Numerous academics and practitioners have conducted research on inheritance distribution models; therefore, it is not a particularly new field of study. Several prior researchers, including Musdah Asmara et al., used the thoughts of modern figures in their analysis procedures.² The findings of his study indicate that Muhammad Syahrur's theory of limits is aligned with modern principles of justice. If women carry a heavy burden in addition to being the family's mainstay, their rights in these conditions are increased by not exceeding the bounds set by the Qur'an. In the meanwhile, additional research, such as the one conducted by Fanny et al., attempts to relate the issue of inheritance distribution with the disputes among the successor

¹ Muchlis Samfrudin Habib, "Sistem Kewarisan Bilateral Ditinjau Dari Maqashid Al-Syari'ah," *De Jure: Jurnal Hukum Dan Syari'ah* 9, no. 1 (2017): 31-32

<https://doi.org/http://dx.doi.org/10.18860/j-fsh.v9i1.4241>.

² Musda Asmara, Rahadian Kurniawan, and Linda Agustian, "Teori Batas Kewarisan Muhammad Syahrur Dan Relevansinya Dengan Keadilan Sosial," *De Jure: Jurnal Hukum Dan Syari'ah* 12, no. 1 (2020): 18

<https://doi.org/http://dx.doi.org/10.18860/j-fsh.v12i1.7580>.



heirs.³ Settlement of inheritance disputes that are handled unilaterally by certain parties, in this case, the substitute heirs, can initially be accomplished through the kinship method. However, if the effort fails and the substitute heir insists on controlling the inheritance, it then becomes the responsibility of the Property and Heritage Agency (BHP) to intervene and resolve the situation. After reaching an agreement by the parties, BHP will assist with the distribution, for instance, by auctioning or directly dividing the inheritance.

To this date, the problem of inheritance distribution has been investigated and criticized. One of them is that there is a gap between the provisions of the Qur'an and the realities of society. Essentially, the Qur'an as a reference and life guidance for all Muslims, has regulated inheritance distribution in a very systematic, detailed manner that upholds the concept of justice. In this context, justice cannot be equated with the results of human *ijtihad*, which for certain, cannot be detached from flaws.⁴ However, reality reveals that these concepts are not entirely relevant because each country has a unique family and kinship system.

Finally, the communal polemics have produced disputes and differences of viewpoint among Muslim leaders and the Muslims themselves, resulting in the emergence of new controversial theologians who were frequently regarded as liberal Islamic groups. These groups include Muhammad Shahrur⁵ dan Nasr Hamid Abu Zayd⁶. Shahrur argues that the classical Islamic concept of inheritance distribution is unsuitable and contradicts modern mathematical conceptions. When compared to the current situation of Muslims, the practice provided by previous Salaf academics is believed to override the principles of equality and justice between the genders. In fact, this practice is considered to contradict the universal principles of the Qur'an, which has taught equality, justice, and prosperity.⁷ In accordance with Shahrur, Nasr Hamid Abu Zayd stated that prior to the Islamic period, Arab society used a patriarchal system. As a result, throughout the Jahiliya period, women received no inheritance at all. Then, according to Q.S al-Nisa: 4, Islam revised the tradition through a 2:1 portion. It states that the substance of the verse highlights the need for a change in inheritance law in society, specifically by granting women their inheritance rights.⁸

This research aims to explore how the Muslim community in Kandangtepus Village implements the inheritance distribution model. The researcher purposefully chose to focus on the Muslim community by the consideration there exist two religious groups that affect each other in the village: Islam and Hinduism. Furthermore, the Muslim community in this village is made up of people from the

³ Fanny Suryani and Herni Widanarti, "Pelaksanaan Pembagian Harta Warisan Yang dikuasai Secara Sepihak Oleh Ahli Waris Pengganti (Studi Pembagian Warisan Menurut Kitab Undang-Undang Hukum Perdata)," *Diponegoro Law Journal* 8, no. 2 (2019): 1117

⁴ Hamid Pongoliu, "Pembagian Harta Waris Dalam Tradisi Masyarakat Di Gorontalo," *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 2 (2019): 197

<https://doi.org/https://doi.org/10.24090/mnh.v13i2.3166>

⁵ Masykurotus Syarifah and Ach. Maulana Elbe, "Metode Waris Perspektif Muhammad Shahrur Serta Upaya Rekonsiliasi Dengan 'Urf," *Kabilah: Journal of Social Community* 6, no. 1 (2021): 84

⁶ Ibnu Muchlis, "Mempertimbangkan Nilai Adil Dalam Warisan Perspektif Nasr Hamid Abu Zayd," *QOF* 1, no. 2 (2017): 129

⁷ Muhammad Shahrur, trans. Sahiron Syamsuddin, and Burhanuddin, *Metodologi Fikih Islam Kontemporer* (Yogyakarta: eLSAQ Press, 2004), 336.

⁸ Nasr Hamid Abu Zayd, *Naqd Al-Khitab Al-Diniy* (Misr: Dar Sina, 1992), 105-106.

Javanese, Madurese, and Tengger ethnic groups. As a result, it is not surprising that Hindu culture and customs remain adamant, due largely to the influence of people from the Tengger ethnic group. Moreover, the author would explain how the Muslim community there practices the principle of *segendong sepikul*. Finally, the author employs a multidisciplinary study to examine the inheritance distribution system of the Muslim community in Kandangtepus Village, including juridical-normative studies, sociological studies, and human rights studies. It is intended that by conducting these studies, the findings of this research would be more comprehensive and capable of answering the author's current research objectives.

Previous academics, like Agus et al., have carried out extensive studies on the inheritance distribution system of the *segendong sepikul* in Javanese tradition. According to his works, the concept of *segendong sepikul* in Javanese customs relates to the 2:1 distribution of inheritance among sons and daughters in Islamic law.⁹ Sidik and M. Roem conducted a similar study, and the findings revealed that in the inheritance distribution system, the Javanese Muslim community, particularly in Yogyakarta, did not entirely adhere to the Islamic inheritance distribution system but rather applied the Javanese customary system, even though there are some systems wherein Islam is also used.¹⁰ Nevertheless, there is an originality value offered in the present research which distinguishes it from the previous ones. The present research attempts to identify whether there is a relation and influence of the Hinduism-based Javanese culture in the *segendong sepikul* inheritance model applied in the Kandangtepus Village. As one of the villages in Lumajang Regency that is the largest producer of Mas Kirana bananas, cow's milk, and Etawa goat's milk, prior studies, such as those undertaken by Alfida et al.,¹¹ Mochammad and Wahyu,¹² have evaluated from an economic perspective. Until this study was written, no other researches had been conducted on the impact of pluralism in the Kandangtepus village society on the inheritance distribution model used by the Muslim community there.

The research method is juridical-empirical,¹³ and the methodology is descriptive-qualitative. This study's research area is Kandangtepus Village in Senduro District, Lumajang Regency. There are two distributions of data sources employed in the procedure. The major data source is the primary data source, and the second one is the secondary data source. The first data source was gathered through interviews with many religious leaders and villagers of Kandangtepus Village. Furthermore, the primary data source was gathered from participant

⁹ Agus Wantaka, Abdul Rosyid, and Eka Sakti Habibullah, "Pembagian Warisan Dalam Perspektif Hukum Islam Dan Hukum Adat Jawa (Studi Komparasi)," *Prosa AS: Prosiding Al Hidayah Ahwal Asy-Syakhshiyah* 01, no. 1 (2019).

¹⁰ Sidik Tono and M. Roem Syibly, "Prinsip Keadilan Dalam Pembagian Waris Dan Wasiat Pada Masyarakat Muslim Yogyakarta," *Istinbath: Jurnal Hukum Islam* 16, no. 2 (2017), 1.

¹¹ Alfida Suwaji Florinsa, Sudarko, and Djoko Soejono, "Motivasi Dan Kontribusi Pendapatan Usaha Kambingperanakan Etawa (Pe) Terhadap Keluuaarga Peternak Di Desa Kandangtepus Kecamatan Senduro Kabupaten Lumajang," *Agribest* 01, no. 02 (2017): 102 <https://doi.org/https://doi.org/10.32528/agribest.v1i2.1139>.

¹² Mochammad Faisal Hamzah and Wahyu Hidayat, "Analisis Pendapatan Petani Pisang Di Desa Kandangtepus Kecamatan Senduro Kabupaten Lumajang," *Jurnal Ilmu Ekonomi* 2, no. 2 (2018): 283

¹³ Bambang Waluyo, *Penelitian Hukum Dalam Praktek* (Jakarta: Sinar Grafika, 2008), 15.



observations of community culture and religious pluralism in the village, which influenced the inheritance distribution model used.¹⁴ The author's findings concerning the diversity of inheritance distribution procedures for the Muslim population in Kandangtepus Village are based on the data acquired from the interviews. While the data gathered through observations are the authors' conclusions on the description of the Muslim community in Kandangtepus Village, which has highly unique social, cultural, and religious backgrounds. The second data source is derived from a review of many books and scientific journal articles pertinent to the issue. The researcher studies and discusses the inheritance distribution model used by the Muslim community of Kandangtepus Village, which is further analyzed using many relevant methodologies.

Result and Discussion

Inheritance in Islamic Law

Mirast is the study of inheritance, which begins with the legal foundation of inheritance distribution in Islam, then moving on to the parties who inherit the inheritance (heirs), the quantity of the property for each heir, and the conditions for a person who receives the inheritance.¹⁵ It is important to remember that the distribution of a person's inheritance after their death is one of the most sensitive issues in family life. Hence, the study of *mirast* truly aids the partitioning process and avoid unfairness by one or more parties, especially those with authority and power.

As with other Islamic regulations, there are pillars that must be addressed in order to account for the validity of the distribution of an inheritance: 1) *Muwarist* (the inheritor), meaning the person who has died and left property, whether small or large. 2) *Warist* (heir), meaning the person who is eligible to inherit the said property following the death of the *muwarist*. 3) *Mirast* (inherited property), essentially the assets left by the *muwarist* that may be inherited after subtracting the inheritor's wishes and requirements, the expense of managing and caring for the body, the inheritor's debt, and the inheritor's will if they have created one.¹⁶

The term 'heir' in the study of fiqh, refers to someone who had died and left assets that can be inherited by their living relatives. Because the transfer of property from the inheritor to the heir can only occur after the death of inheritor, the term "inheritor" is more correctly used to describe the person who had died. As a result, the inheritor is not permitted to choose who would receive their inheritance before their death because the Qur'an regulates everything. The inheritor's freedom to transact their property is only limited to one-third of all property owned, also known as a will.¹⁷

According to the regulations of the Compilation of Islamic Law (*Kompilasi Hukum Islam*, 'KHI'), the group eligible to inherit is divided into two. First, the group entitled to inherit property as a result of the *nasab* factor (blood relations). The male group consists of a father, son, brother, uncle, and grandfather. While the female group consists of the mother, daughter, and grandmother's sister. Second, there is a

¹⁴ This study's participation observation data were gathered by direct interaction with the people of Kandangtepus Village, allowing researchers to dive deeply into their lives.

¹⁵ Wahbah Az-Zuhaili, *Fiqh Islam Wa Adillatuhu* Jilid 10 (Jakarta: Gema Insani, 2011), 346.

¹⁶ Zainuddin Ali, *Pelaksanaan Hukum Waris Di Indonesia* (Jakarta: Sinar Grafika, 2010), 46.

¹⁷ Amir Syarifuddin, *Hukum Kewarisan Islam* (Jakarta: Kencana, 2008), 204.



group of people who can inherit by course of marital bonds, especially widowers and widows. If the heirs are complete, the only people who can inherit the property in this group are children, fathers, mothers, widows, and widowers.¹⁸ In addition to the two previously stated groupings, the *wala'* factor might be a cause of inheritance. What is indicated by *wala'* is the process of inheriting because of the services of a person who has liberated slaves, and the slave becomes wealthy as a result. If the liberated slave dies, the person who released them has the right to his inheritance.¹⁹ However, in Indonesia, the idea of *wala'* is no longer applicable. A distribution of property can be considered an inheritance whether it meets the specific criteria. The first criterion is the passing of the decedent. Death can be proven by *haqiqi*,²⁰ *hukmi*,²¹ or *taqdiri*.²² The second condition is the life of the heir. The third condition is the absence of interference. The following reasons may interfere a person from receiving an inheritance: 1) becoming a murderer on the death of the inheritor, attempting to kill the inheritor, or committing abuse and violence against the inheritor,²³ 2) religious differences, and 3) adultery.

As a country with a multiethnic religious background, Indonesia has a complex inheritance system. Among these are the Sunni inheritance system, the Shia inheritance system, the *Burgelijk Wetboek* (BW) inheritance system, the customary law inheritance system, and the KHI inheritance system. However, the present study will concentrate on the inheritance system as described by Sunni theologians. Sunni theologians divide the heirs into three categories: *dzawil furudh*, *ashabah*, and *dzawil arham*. *Dzawil furudh* or *ashabul furud* are those eligible to receive an inheritance after the death of the inheritor based on the Qur'anic distribution. There are twelve members of the *dzawil furudh* category, four of which are men, including one's spouse, father, grandpa, and mother's brother. The remaining eight women include spouses, mothers, grandmothers, daughters, daughters of sons, sisters of the same age, sisters of the same father, and sisters of the mother. The Quran specifies the inheritance portion of *Dzawil Furudh* by the following divisions: half, quarter, one-eighth, two-thirds, one-third, and one-sixth.²⁴

The second set of heirs is known as *ashabah*, and they inherit after each *dzawil furudh* has received their portion. In another interpretation, *ashabah* is an heir who inherits the remaining inheritance that *dzawil furudh* have received. This second heir has no specific provisions relating to the inheritance. Thus, in the distribution of inheritance, heirs of *Ashabah* can sometimes receive the remaining (if there is a *dawil*

¹⁸ Article 174 of the KHI is seen in *Kompilasi Hukum Islam Dan Undang-Undang Perkawinan, Wakaf, & Penyelenggaraan Haji* (Jakarta: ALIKA, 2016), 44.

¹⁹ Nursyamsuddin, 'Pembagian Harta Waris Sebelum Muwaris Meninggal Dunia Menurut Perspektif Hukum Waris Islam', *Mahkamah: Jurnal Kajian Hukum Islam*, 3.1 (2018): 73

²⁰ Natural death is the death of a person who can be known through direct vision, news, and evidence.

²¹ Legal death is death because of a judge's decision. This decision is occasionally accompanied by the possibility that the suspect is still alive. For example, when a judge sentences a missing person to death. Or there is a belief that the suspect is still alive, such as a judge's decision on apostates who are thought to be dead since they are in *Dar al-Harb*.

²² Presumptive death is death based on the assumption that someone has died. For example, the death of a fetus in the womb of a murdered woman..

²³ Article 173 of the KHI

²⁴ Az-Zuhaili, 378.



furudh), or sometimes nothing at all (if there is no remaining part), or sometimes the entire property if there are no heirs from the *dawil furudh* category.²⁵ The division consists of three types: 1) *Ashabah bin nafsi*, a person who becomes the heir of *ashabah* their his own without external influence. The heirs of *Ashabah bin Nafsi* consist of sons, grandsons of sons, dads, and brothers. They are entitled to the remaining of the inheritance once it has been distributed to *dzawil furudh*. 2) *Ashabah bil ghairi*, women who become *ashabah* heiresses because they are descended from other *ashabah* heiresses, such as girls who become *ashabah bil ghairi* heiresses because they are related to boys. 3) *ashabah ma'al ghairi*, or those who are in the position of *ashabah* heirs because they are tagged along with daughters and other heirs, such as siblings or a father.²⁶

Meanwhile, what is meant by *dzawil arham* is heirs who are not classified as *ashhabul furudh* nor are they part of *ashabah*. Some of the heirs who are part of this third group are aunts (father's or mother's sister), maternal uncles (mother's brothers), nephews of sisters, grandsons or granddaughters of daughters, sons, and daughters of granddaughters, and so on. The heirs who are part of *dzawil arham* group are not regulated in the Qur'an thus leading to the differences of opinion among the theologians, some theologians include *dzawil arham* as a group eligible to become heirs, while others are against such view. This second group of theologians does not include *dzawil arham* as the receiver of the inheritance even though no one else would inherit the inheritance of the inheritor.²⁷

***Al-Sulhu* Concept in the Islamic Inheritance System**

Al-Sulhu (peace) is one of the known Islamic principles for issues or dispute solutions. Etymologically defined, *al-sulhu* means "solving disputes." In terms of language, *al-sulhu* is an effort to reconcile disputing parties over a right or obligation. With these efforts, an agreement that is acceptable to all parties will emerge, allowing them to end their disputes and find a resolution.²⁸ In reality, not all difficulties can be resolved peacefully, such as those involving the legitimacy of a marriage, the legality of child recognition, and the use of peace to excuse something unlawful or vice versa.

The validity of *al-sulhu* has its legality in the texts of the Qur'an and the hadith of the prophet. Among them is Q.S al-Hujurat: 10 which states, "Indeed the believers are brothers, so make peace between your two brothers and fear Allah so that you may receive mercy." and Q.S al-Nisa': 128 which affirm, "Peace is better". As for the legality of *al-sulhu* from the Messenger of Allah, it is apparent in one of the hadiths narrated by Ibn Hibban and Tirmizi which states, "Reconciling two Muslims (in conflict) is acceptable except for peace that leads to attempts to forbid the lawful and excuse the unlawful." Peace is regulated by Indonesian laws and regulations in addition to the Sharia, which provides legality. These regulations can be found in Article 1851 of the Civil Code, the Supreme Court Regulation No. 1 of 2016 on Mediation Procedures in Courts, as well as KHI. The provisions for peace in the

²⁵ Abdul Ghofur Anshori, *Hukum Kewarisan Islam Di Indonesia Eksistensi Dan Adaptasi* (Yogyakarta: Gadjah Mada University Press, 2012), 49.

²⁶ Ahmad Azhar Basyir, *Hukum Waris Islam* (Yogyakarta: UII Press, 2001), 38.

²⁷ Moh. Muhibbin and Abdul Wahid, *Hukum Kewarisan Islam Sebagai Pembaruan Hukum Positif Di Indonesia* (Jakarta: Sinar Grafika Offset, 2009), 67.

²⁸ Ahmad Muflikhudin, "Subtansi Akad As-Sulhu Sebagai Induknya Penyelesaian Sengketa Dalam Mu'amalah Menurut Imam Jalaludin As-Suyuti," *As-Salam* I IX, no. 1 (2020), 4.



distribution of inheritance for the Indonesian Muslim community can be found in Article 183 of the KHI, which states, “The heirs may agree to make peace in the distribution of inheritance, once each has been informed of his part.”

Regarding to the pillars of the *al-Sulhu* contract, Hanafi scholars affirm that it is only sufficient with the *ijab* and *qabul* between the disputing parties. Meanwhile, according to a number of other scholars, there are four pillars that must be fulfilled in order for the *al-sulhu* contract to be considered valid. The four pillars are: 1) both parties are at peace, 2) *ijab* and *qabul*, 3) something that is disputed, and 4) a substitute for something that is disputed.²⁹ Based on the above discussion, it is possible to conclude that the distribution of inheritance based on the idea of *sulhu* is justified by Islamic law. In reality, the distribution can be accomplished by negotiation among heirs to determine the amount of inheritance received or by employing a third party (mediator). To avoid family problems, the *al-sulhu* approach can be utilized to settle inheritance disputes.

The Principle of *Segendong Sepikul* in the Inheritance Distribution System of The Muslim Community in Kandangtepus Village

Based on the findings of observations and interviews in this study, it is possible to infer that the Muslim community of Kandangtepus Village distributes inheritance contrary to in the *fiqh* of *Mawaris* rules. In general, inheritance is distributed before the death of the *muwarist*, even though the definition of inheritance in *fiqh* literature is property distributed after the death of the *muwarist*. Meanwhile, in *muamalah fiqh*, property distributed before the death of the inheritor is referred to as gifts.

When the child of the property owner (parent/heir) is married, the property may be divided with the intention that the children of the heir will inherit property that they may use to run their household. Another factor to take into account is that because parents are old and most of their assets are in the form of land, they are unable to manage them effectively. To reduce the emergence of undesirable issues after the death of the *muwarist*, such as disputes and animosity amongst siblings, the property of the parents is purposefully distributed while they are still alive.³⁰ In some other civilizations, the heir simply distributes their inheritance; after their death, the heirs take over control.³¹

There are different views on the concept of inheritance there; some believe that the property distributed by their parents before death is part of the inheritance. At the same time, others argue that the property is a gift or *hibah*. Public opinion regarding the two concepts above is closely related to the educational background that has been taken. People who have received education in Islamic boarding schools (*pesantren*) are generally much better in understanding and differentiating between the concepts of inheritance and gift.³² After consulting with the family, if there are any assets left after the death of the parents that have not been distributed, those assets will be given to the children. The majority of the time, these assets take the form of cash, livestock,

²⁹ Wahbah Az-Zuhaili and trans. Abdul Hayyie Al-Kattani, *Fiqh Islam Wa Adillatuhu Jilid 6* (Jakarta: Gema Insani, 2011), 242.

³⁰ Rumiyyati, interview by author, November 30, 2021.

³¹ Imri, interview by author, December 5, 2021.

³² Marzuqi, interview by author, November 30, 2021.



and property, or “*sangu tuwo*” as it is known in Javanese. Even if the distribution of these assets is not always equal, the value of the benefit is given priority. For instance, children who take longer to care for their parents would receive more allocations, and children who are struggling financially will receive more rations than their wealthier siblings.³³

In some family practises, the heir who inherits more than their other siblings is the last child. In addition to receiving an inheritance in the form of land, they would also receive the house left by their parents who had died. There are at least two reasons why some families allocate more inheritance to their last child. First, the heir usually spends the rest of their life with the last child because their other children have settled with their own lives and their respective families. Second, generally, the economy of the last child remain unstable compared to their older siblings, especially if they have not married yet.³⁴ One respondent, a religious leader in Kandangtepus Village, stated that he had never come across an inheritance system based on the *Mawaris fiqh*. He claims that this is to ensure that the Muslim population there may inherit their properties to their children before they pass away. In that regard, the property cannot be classified as an inheritance but rather as a gift. Additionally, the distribution model has nothing to do with adherents of other religions.³⁵ Although Hinduism has had a significant impact on the Muslim community members of Kandangtepus Village, this impact merely extends to the cultural customs of the community, not as to how inheritance is distributed.

The parties who would receive the inheritance to deviate from the rules of *Mawaris fiqh* beside the previously mentioned points. As a result, the researcher believes it would be interesting to explore the matter. The persons eligible to inherit property in the Sunni inheritance system are divided into three groups: *dzawil furudh*, *ashabah*, and *dzawil arham*. Only the children of the dead inheritor are eligible to inherit property in Muslim community of Kandangtepus Village. If a child passes away before their parents, the grandson is appointed as the child's substitute heir to receive the inheritance. The inheritance will be given to a family member who is seen to be more deserving if the child has no children.³⁶ There will always be family members who feel that they are the most deserving, which leads to conflict when this second arrangement is implemented.

The reasons stated by the interviewees during the interview were as follows: first, because of their closeness to and assistance with caring for their parents, children would have thought to have the greatest claim to inherit. The second justification is to prevent conflict and promote peace between parents and children. Many children of the inheritor will not accept the inheritance if it is also given to family members other than their own children since, obviously, the family members of the inheritors would also receive an inheritance from their respective parents. The third reason is that it is probable that the inheritor's children will receive the inheritance once the inheritor passes away so that the inheritor's children would have greater influence over how their parents' property is handled and distributed. The last reason is that even when an inheritance is exclusively given to the inheritor's children, it frequently causes conflict, especially if it is also given to other family members. While other

³³ Rumiyaati, interview by author, November 30, 2021.

³⁴ Imri, interview by author, December 5, 2021.

³⁵ Jailani, interview by author, March 28, 2022.

³⁶ Rumiyaati, interview by author, November 30, 2021.

family members, such as those who nurture, look after or pay for the inheritor's life, have never made a contribution as long as the inheritor is alive.³⁷

This discussion leads to the conclusion that the Muslim community of Kandangtepus Village ensures the ideals of harmony and prosperity the highest priority when allocating inheritance. Because it eliminates disputes that may split up the family, the Muslim community there solely gives an inheritance to their children accordingly, adopting the statement of Gustav Radbruch, which divides the fundamental principles of law into three categories, namely fairness, pragmatism, and certainty.³⁸ In order to distribute the inheritance, the Muslim community of Kandangtepus Village selected a method that was both practical and reasonable. The distribution model is also driven by the misunderstanding of certain Muslim communities on the fact that inheritance distribution has been carefully regulated in Islam.

Islam has essentially decided and controlled the inheritance distribution for each heir in considerable detail. The majority of Muslims in Kandangtepus Village, however, do not share the inheritance as the concept that the *Fiqh* of *Mawaris* suggests. The family will decide how to share the inheritance. Sometimes the inheritance is divided equally among the inheritor's children, while other times it is modified to meet the requirements of the heirs. The division with such a model also departs from the misunderstanding of the community on the idea of Islamic inheritance in addition to departing from the value of the benefit, which is commonly held by the locals. One of the respondents that the researcher has interviewed stated that they were unaware that inheritance distribution was subject to Islamic law.³⁹ Other sources, who are conversant with the idea of inheritance, disagree with the *muwarist* inheritance rules set out in the *fiqh* of *Mawaris*.⁴⁰ The Muslim community promotes the idea of deliberate action while distributing inheritances in order to maintain family peace. Religious authorities also do not distribute inheritance as the notion in Islamic law. Therefore, this type of inheritance distribution persists since there is no role model they may imitate. Islamic inheritance was never discussed in speeches given by religious authorities at local religious events. These speeches covered greater ground in terms of *ubudiyah*, ethics, Islamic history, and daily life.

The Principle of *Segendong Sepikul* in the Multidisciplinary Studies Perspective

Based on the discussion above, it is possible to conclude that the adoption of the *segendong sepikul* concept in inheritance distribution by the Muslim community of Kandangtepus Village contradicts the Sunni inheritance law. Sunni inheritance law contains detailed inheritance regulations in terms of the rights that each successor acquires. Even if inheritance distribution has been regulated in this approach, there remain many issues on the value of justice that is promoted, particularly because it is seen to produce inequality in rights between men and women. In Sunni inheritance *fiqh*, the male heir receives two parts while the female heir receives only one.

³⁷ Marzuqi, interview by author, November 30, 2021.

³⁸ Muhammad Erwin, *Filsafat Hukum* (Jakarta: Raja Grafindo, 2012), 123.

³⁹ Rumiati, interview by author, November 30, 2021.

⁴⁰ Marzuqi, interview by author, November 30, 2021.



In terms of inheritance distribution, the principle of *segendong sepikul* is firmer than the Sunni *fiqh* of inheritance since it prioritizes distributive justice rather than gender. This idea attempts to balance the rights and duties of each heir. In Sunni inheritance *fiqh*, there is no explanation for why the males receive two parts and the females only one, implying that distributive fairness is not as obvious. In reality, studying inheritance issues is closely linked to the concept of kinship.

The concepts of inheritance and maintenance are closely connected. This may be seen in the practice of *segendong sepikul* by the Muslim community of Kandangtepus Village. In terms of inheritance distribution, the community focuses on the responsibilities that the heirs undertake rather than their gender. As a result, men and women can switch parts. Men can receive two, and women can receive one in certain circumstance; while women can receive two, and men can receive one in the other. This contrasts with the idea of inheritance in Sunni *fiqh*, where it is unclear if inheritance and maintenance are synonymous. If inheritance and maintenance are genuinely two linked elements in Sunni regulations, then the 2:1 divide can be regarded to incorporate distributive justice as well as the principle of *segendong sepikul*. Men carry economic responsibility, according to the study of *fiqh*. When a husband marries, he is obligated to provide for his wife and children. Based on the above analysis, the writer believes that the division of 2:1 that differs from Q.S al-Nisa': 11 which states, "The share of a son is equal to the share of two daughters," is not about numbers but about the values included in the verse. An in-depth examination is required to comprehend it.

Furthermore, this practice contradicts the regulations outlined in KHI Articles 176-193. In reality, if one looks closely at Article 183 of the KHI, which states, "The heirs can agree to make peace in the distribution of inheritance, once everyone realizes their portion," one can see that the formulators made an attempt to fit the customs of Indonesian people. However, the tone of this article gives rise to conflicting interpretations as to whether the term "each one is aware of his portion" refers to the distribution specified in Article 176-193 of the KHI or to the distribution of each family's inheritance. If the meaning of the term in the verse is consistent with the first interpretation, it is apparent that the practice of Muslim community in Kandangtepus Village contradicts the KHI, particularly Article 183. This is due to the heirs' lack of knowledge about how much they should receive. If, on the other hand, the meaning of the term is consistent with the second interpretation, thus the practice of *segendong sepikul* by the Muslim community in Kandangtepus Village is in accordance with Article 183 of the KHI.

In short, the inheritance law for Muslims in Indonesia is very clearly regulated in the KHI, which is based on the Presidential Instruction of the Republic of Indonesia Number 1 of 1991. Unfortunately, this guideline does not have the same legal power as the legislation. As a result, the researcher contends that there is a need for legislation that particularly governs Islamic inheritance law rather than just KHI. A statute whose substance is adapted to Indonesian culture while sticking to Islamic principles. In order for the inheritance regulations in Indonesia to have an everlasting legal effect and may be enforced nationally. Thus, inheritance distribution is more than simply a set of numbers that might lead to family disputes, but it can also bring the value of fairness and prosperity to all parties. However, the existence of an inheritance law cannot be utilized as the only answer to inheritance disputes in Indonesia. To address this issue, those the community trusts must employ a variety

of ways. Given the realities of the Muslim community in Kandangtepus Village, the inheritance requirements of *Mawaris fiqh* cannot be properly enforced since they do not satisfy the concepts of justice and prosperity.

The difference between inheritance distribution and *fiqh* laws is caused by people's misunderstanding on the idea of inheritance itself. According to Soerjono Soekanto, the amount of legal knowledge of the community has a major effect on their level of legal compliance. When there is a high degree of legal awareness, there is also a high level of compliance. Soerjono divides the legal awareness of the community into four indicators to make it easier to assess: awareness of the law, acquaintance to the law, legal attitude, and legal behavior.⁴¹ Based on the findings of the researchers' observations on the inheritance distribution model of the Muslim community's in Kandangtepus Village and the findings of interviews with multiple sources, it is possible to conclude that the first indicator used to assess the community's level of legal awareness has not been fully met. As a result, it is clear that the community's degree of legal compliance in distributing inheritance in line with the norms of *Mawaris fiqh* is exceedingly poor. Even among the Muslim community of Kandangtepus Village, the practice of distributing inheritance according to *fiqh* standards is rare.

However, the low level of community legal compliance has a beneficial influence on daily living. Discussion culture becomes increasingly active in order to reduce disagreements that lead to family conflicts. According to Gustav, the Muslim community of Kandangtepus Village prioritizes fairness and benefit over legal certainty when distributing inheritance rights. However, there is an imbalance between the text and the context from the standpoint of *Mawaris fiqh*. However, the practice of distributing inheritance by the Muslim community is in line with the concept of *al-islah* (peace). When a deceased parent leaves an inheritance, this may be evident in the culture of discussion among family members. Through the discussion, each heir will be aware of the inheritance portion achieved through mutual agreement, reducing future family conflicts. Based on the explanation provided, it is possible to conclude that the practice does not emerge from the Islamic inheritance system when studied using the idea of *al-islah*. Forcing Islamic law with a *Mawaris fiqh* approach to be implemented when the Muslim community of Kandangtepus Village is still unprepared due to a lack of information will cause the people to avoid Islamic ideals since it has the potential to generate conflict and family disputes.

Human rights are natural and essential rights in every human being that must always be recognized, respected, and maintained by each individual, society, and state. Based on this perspective, it is possible to conclude that the essence of defending human rights is to ensure the continuation of each individual's life as a whole. This type of protection can take several forms, including ensuring harmony between rights and obligations, as well as harmony between individual and community interests.⁴²

⁴¹ Winarno Yudho and Heri Tjandrasari, "Efektivitas Hukum Dalam Masyarakat," *JURNAL HUKUM & PEMBANGUNAN* 17, no. 1 (1987): 57
<https://doi.org/http://dx.doi.org/10.21143/jhp.vol17.no1.1227>.

⁴² ICCE UIN Jakarta Team, *Demokrasi, Hak Asasi Manusia Dan Masyarakat Madani* (Jakarta: Prenada Media, 2003), 201.



Human rights protection and respect are the duties and obligations of numerous parties, including people, communities, and even the state. In other words, the accomplishment of rights does not relieve one from the fulfillment of obligations. Furthermore, efforts to serve individual interests must not conflict with the common good (public interest). As a result, efforts to fulfill, preserve, and respect each individual's human rights must be complemented by the fulfillment of their tasks and obligations as social beings.⁴³

The practice of inheritance distribution based on the idea of *segendong sepikul* by the Muslim community of Kandangtepus Village is fundamentally in line with the concept of human rights. The quantity of obligations carried out by each heir is particularly important in the partition of inheritance based on family discussions. The heirs with the greatest responsibility will receive a significantly higher percentage of the inheritance than their siblings, who do not contribute to their parents and family's lives. Hence there is a match between the rights enjoyed and the obligations fulfilled. This effort also demonstrates respect for and preservation of the rights of other family members.

This practice is also in line with the rules of Article 2 of the Universal Declaration of Human Rights, which states that everyone is entitled to all of the rights and freedoms stated in the declaration, with no exceptions, including race, color, gender, language, religion, politics, birth, and property ownership. The article corresponds to the universal Qur'anic principles expressed in Q.S al-Nisa': 7, "There is a right for men to share in the inheritance of both parents and relatives, and a right for women to share (also) in the inheritance of both parents and relatives, either a little or a lot depending on the part that has been determined." When it comes to inheritance, the Muslim community in Kandangtepus Village does not utilize gender as a criterion; instead, they look at the amount of responsibility that has been carried out. Although gender is not utilized as a criterion, this does not imply that the actions of the Muslim community in Kandangtepus Village degrade certain genders or are inconsistent with the laws and ideals of the Qur'an. However, as the conceptual value provided in verse illustrates, this behavior is a symptom of efforts to achieve equality between men and women. This verse is one of the affirmations and great appreciation for women in Islam. Previously, during the *Jahiliyah* (endarkened) period, the living tradition did not give women their inheritance rights; an inheritance was only reserved for men.⁴⁴ As a result, the revelation of this passage confirms that both men and women are equally entitled to inherit. The distribution is implemented in the Muslim community of Kandangtepus Village by distributing the inheritance according to the obligations and contributions made by each heir.

Conclusion

In the practice of distributing the inheritance by the Muslim community in Kandangtepus Village, there is a contradiction between the text and the context, according to *fiqh*. However, this does not imply that their conduct deviates from Islamic teachings because, according to the study, the practice is in accordance with the concept of *al-islah* (peace), whose legitimacy has been clearly and firmly defined in the scriptures of the Qur'an and hadith. The tradition of distributing the

⁴³ ICCE Team, 201.

⁴⁴ Akbar Kadengkang, "Hak Waris Dalam Hukum Islam Ditinjau Dari Hak Asasi Manusia," *Lex Et Societati* 5, no. 9 (2017): 117

inheritance of the Muslim community in Kandangtepus Village cannot be disregarded as irrelevant, given that, in practice, they are aiming for principles such as prosperity, fairness, and kinship. When viewed more closely, these principles are truly universal Islamic and cultural precepts that have been anchored and lived for a long time in Indonesian society. As a result, while exploring inheritance difficulties, it is not sufficient to utilize only a normative method but also other ways that are more suited to answering community problems.

Bibliography

- Ali, Zainuddin. *Pelaksanaan Hukum Waris Di Indonesia*. Jakarta: Sinar Grafika, 2010.
- Anshori, Abdul Ghofur. *Hukum Kewarisan Islam Di Indonesia Eksistensi Dan Adaptasi*. Yogyakarta: Gadjah Mada University Press, 2012.
- Asmara, Musda, Rahadian Kurniawan, and Linda Agustian. "Teori Batas Kewarisan Muhammad Syahrur Dan Relevansinya Dengan Keadilan Sosial." *De Jure: Jurnal Hukum Dan Syar'iah* 12, no. 1 (2020). <https://doi.org/http://dx.doi.org/10.18860/j-fsh.v12i1.7580>.
- Az-Zuhaili, Wahbah. *Fiqih Islam Wa Adillatuhu Jilid 10*. Jakarta: Gema Insani, 2011.
- Az-Zuhaili, Wahbah, and terj. Abdul Hayyie Al-Kattani. *Fiqih Islam Wa Adillatuhu Jilid 6*. Jakarta: Gema Insani, 2011.
- Basyir, Ahmad Azhar. *Hukum Waris Islam*. Yogyakarta: UII Press, 2001.
- Erwin, Muhammad. *Filsafat Hukum*. Jakarta: Raja Grafindo, 2012.
- Florinsa, Alfida Suwaji, Sudarko, and Djoko Soejono. "Motivasi Dan Kontribusi Pendapatan Usaha Kambingperanakan Etawa (Pe) Terhadap Keluarga Peternak Di Desa Kandangtepus Kecamatan Senduro Kabupaten Lumajang." *Agribest* 01, no. 02 (2017). <https://doi.org/https://doi.org/10.32528/agribest.v1i2.1139>.
- Habib, Muchlis Samfrudin. "Sistem Kewarisan Bilateral Ditinjau Dari Maqashid Al_Syari'ah." *De Jure: Jurnal Hukum Dan Syari'ah* 9, no. 1 (2017). <https://doi.org/http://dx.doi.org/10.18860/j-fsh.v9i1.4241>.
- Hamzah, Mochammad Faisal, and Wahyu Hidayat. "Analisis Pendapatan Petani Pisang Di Desa Kandangtepus Kecamatan Senduro Kabupaten Lumajang." *Jurnal Ilmu Ekonomi* 2, no. 2 (2018).
- Jakarta, Tim ICCE UIN. *Demokrasi, Hak Asasi Manusia Dan Masyarakat Madani*. Jakarta: Prenada Media, 2003.
- Kabupaten Lumajang Dalam Angka 2022*. Lumajang: BPS Kabupaten Lumajang, 2022.
- Kadengkang, Akbar. "Hak Waris Dalam Hukum Islam Ditinjau Dari Hak Asasi Manusia." *Lex Et Societati* 5, no. 9 (2017).
- Kecamatan Senduro Dalam Angka*. Lumajang: BPS Kabupaten Lumajang, 2017.
- Kompilasi Hukum Islam Dan Undang-Undang Perkawinan, Wakaf, & Penyelenggaraan*



Haji. Jakarta: ALIKA, 2016.

Muchlis, Ibnu. "Mempertimbangkan Nilai Adil Dalam Warisan Perspektif Nasr Hamid Abu Zayd." *QOF* 1, no. 2 (2017).

Muflikhudin, Ahmad. "Subtansi Akad As-Sulhu Sebagai Induknya Penyelesaian Sengketa Dalam Mu'amalah Menurut Imam Jalaludin As-Suyuti." *As-Salam I* IX, no. 1 (2020).

Muhibbin, Moh., and Abdul Wahid. *Hukum Kewarisan Islam Sebagai Pembaruan Hukum Positif Di Indonesia*. Jakarta: Sinar Grafika Offset, 2009.

Nursyamsuddin. "Pembagian Harta Waris Sebelum Muwaris Meninggal Dunia Menurut Perspektif Hukum Waris Islam." *Mahkamah: Jurnal Kajian Hukum Islam* 3, no. 1 (2018).

Pongoliu, Hamid. "Pembagian Harta Waris Dalam Tradisi Masyarakat Di Gorontalo." *Al-Manahij: Jurnal Kajian Hukum Islam* 13, no. 2 (2019). <https://doi.org/https://doi.org/10.24090/mnh.v13i2.3166>.

Shahrur, Muhammad, terj. Sahiron Syamsuddin, and Burhanuddin. *Metodologi Fikih Islam Kontemporer*. Yogyakarta: eLSAQ Press, 2004.

Subahri, Bambang. "Pesan Simbolik Tradisi Sandingan Pada Masyarakat Pandalungan Di Desa Jenggrong Kecamatan Ranuyoso Kabupaten Lumajang." *Dakwatuna: Jurnal Dakwah Dan Komunikasi Islam* 4, no. 2 (2018).

Suryani, Fanny, and Herni Widanarti. "Pelaksanaan Pembagian Harta Warisan Yang dikuasai Secara Sepihak Oleh Ahli Waris Pengganti (Studi Pembagian Warisan Menurut Kitab Undang-Undang Hukum Perdata)." *Diponegoro Law Journal* 8, no. 2 (2019).

Syarifah, Masykurotus, and Ach.Maulana Elbe. "Metode Waris Perspektif Muhammad Shahrur Serta Upaya Rekonsiliasi Dengan 'Urf." *Kabilah: Journal of Social Community* 6, no. 1 (2021).

Syarifuddin, Amir. *Hukum Kewarisan Islam*. Jakarta: Kencana, 2008.

Tono, Sidik, and M. Roem Syibly. "Prinsip Keadilan Dalam Pembagian Waris Dan Wasiat Pada Masyarakat Muslim Yogyakarta." *Istinbath: Jurnal Hukum Islam* 16, no. 2 (2017).

Waluyo, Bambang. *Penelitian Hukum Dalam Praktek*. Jakarta: Sinar Grafika, 2008.

Wantaka, Agus, Abdul Rosyid, and Eka Sakti Habibullah. "Pembagian Warisan Dalam Perspektif Hukum Islam Dan Hukum Adat Jawa (Studi Komparasi)." *Prosa AS: Prosiding Al Hidayah Ahwal Asy-Syakhshiyah* 01, no. 1 (2019).

Yudho, Winarno, and Heri Tjandrasari. "Efektivitas Hukum Dalam Masyarakat." *JURNAL HUKUM & PEMBANGUNAN* 17, no. 1 (1987). <https://doi.org/http://dx.doi.org/10.21143/jhp.vol17.no1.1227>.

Zayd, Nasr Hamid Abu. *Naqd Al-Khitab Al-Diniy*. Misr: Dar Sina, 1992.

“Gunung Semeru dan Upacara Pujawali Di Pura Mandhara Semeru Agung”,
<https://www.liputan6.com/regional/read/4728450/gunung-semeru-dan-upacara-pujawali-di-pura-mandhara-semeru-agung>, diakses 28 Maret 2021.

