



## Contextualizing Islamic Inheritance Law in Indonesia: Addressing Negative Stigma

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### Abstract

Islamic inheritance law is stigmatized due to its rigidity and conservatism. The rigidity and conservatism of Islamic inheritance can be seen in the view that Islamic inheritance rules cannot be changed or modified. In addition, the assumption of Islamic inheritance rules does not consider the social developments that occur over time. This research aims to explore how Islamic inheritance law is applied in Indonesia and how contextualization is carried out in response to existing stigma. This research employs a qualitative study with a normative juridical approach. The research data is derived from documents and texts on Islamic inheritance law and concrete cases of contextualization of Islamic inheritance law in Indonesia in different situations and contexts. The data are analyzed using descriptive interpretative techniques with the application of Amina Wadud's hermeneutics of tauhid. The research findings indicate that Islamic inheritance law in Indonesia has undergone contextualization, thus negating the negative stigma attached to Islamic inheritance. Contextualization is achieved by understanding and advocating Islamic inheritance law in the Indonesian context, reconstructing the basic concepts of Islamic inheritance law according to the Indonesian context, and promoting the resolution of inheritance conflicts through consultation and mediation. This research offers a model of inheritance division applied in Indonesia that is contextual and flexible based on Amina Wadud's hermeneutics of tauhid.

**Keywords:** Contextualization, Indonesia, Islamic Inheritance, Hermeneutics of Tawhid, Stigma.

### Asbtrak

Hukum waris Islam distigmatisasi karena dianggap kaku dan konservatif. Kekakuan dan konservatisme warisan Islam dapat dilihat dalam pandangan bahwa aturan waris Islam tidak dapat diubah atau dimodifikasi. Selain itu, ada anggapan bahwa aturan waris Islam tidak memperhatikan perkembangan sosial yang terjadi dari waktu ke waktu. Penelitian ini bertujuan untuk mengkaji bagaimana penerapan hukum waris Islam di Indonesia dan bagaimana kontekstualisasi dilakukan dalam merespon stigma yang ada. Penelitian ini merupakan jenis penelitian kualitatif dengan pendekatan yuridis normatif. Data penelitian bersifat sekunder yang bersumber dari dokumen dan teks tentang hukum waris Islam dan kasus-kasus konkret tentang kontekstualisasi hukum waris Islam di Indonesia dalam situasi dan konteks yang berbeda. Data dianalisis menggunakan teknik interpretatif deskriptif dengan menggunakan hermeneutika tauhid Amina Wadud. Hasil penelitian menunjukkan bahwa hukum waris Islam di Indonesia telah mengalami kontekstualisasi sehingga stigma negatif yang melekat pada waris Islam dapat dinegasikan. Kontekstualisasi dilakukan dengan memahami dan memperjuangkan hukum waris Islam dalam konteks Indonesia, merekonstruksi konsep dasar hukum waris Islam sesuai dengan konteks Indonesia, serta mendorong penyelesaian konflik waris melalui musyawarah dan mediasi. Penelitian ini menawarkan model pembagian warisan yang diterapkan di Indonesia yang kontekstual dan fleksibel berdasarkan hermeneutika tauhid Amina Wadud.

**Kata Kunci:** Konektualisasi, Kewarisan Islam, Hermeneutika Tauhid, Stigma.



## Introduction

The implementation rule of Islamic inheritance law in Indonesia is deemed as rigid and conservative<sup>1</sup>. This can be seen in the example of Islamic inheritance law, which is deemed rigid, where parents who have two sons and one daughter, their wealth will be divided into three parts, with two parts received by the sons and one part received by the daughter. This rule is part of Islamic inheritance law and cannot be altered or modified. This is because the rule is derived from the Quran and Hadith and is understood to be fair and equitable in the distribution of inheritance.<sup>2</sup>

The conservative execution of Islamic inheritance law is also implemented in the distribution of inheritance, which is only allowed to be received by certain family members, such as children, husbands, wives, and parents. In some cases, inheritance may not be received by women, as is the case in the inheritance distribution practiced in the Lampung and Batak societies, which adhere to a patrilineal inheritance system.<sup>3</sup> This inheritance model is deemed conservative because it views women as inferior and unworthy of an equal share in the distribution of inheritance.<sup>4</sup> This rule is also considered conservative because it does not take into account social developments and environmental changes that occur over time.<sup>5</sup>

Feminist movements perceive Islamic inheritance law from a different perspective. They generally view Islamic inheritance law as conservative and discriminatory against women.<sup>6</sup> Interpretations of Islamic inheritance law restrict women's rights to an equal share of inheritance compared to men, a practice considered prejudiced and unfair.<sup>7</sup> Additionally, feminist organizations are involved in discussions about interpretations that undermine women's rights to equal inheritance. Their perspective reflects entrenched patriarchal attitudes and discrimination against women.<sup>8</sup> Therefore, certain feminists advocate for a further evaluation or interpretation of Islamic inheritance law to promote justice and inclusivity for women. Overall, the feminist perspective on Islamic inheritance law underscores the need for

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<sup>1</sup> Anugrah Reskiani et al., "Reform Methods of Islamic Inheritance Law in Indonesia in Jurisprudence," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (June 9, 2022): 40, doi:10.31958/juris.v21i1.5564.

<sup>2</sup> Muhammad Ali Murtadlo, "Keadilan Gender Dalam Hukum Pembagian Waris Islam Perspektif The Theory Of Limit Muhammad Syahrur," *Gender Equality: International Journal of Child and Gender Studies* 4, no. 1 (February 25, 2019): 175, doi:10.22373/equality.v4i1.4487.

<sup>3</sup> Yapiter Marpi, "Eksistensi Pembagian Harta Waris Adat Lampung Pepadun Secara Sistem Patrilineal Pada Lampung Timur," *Res Judicata* 5, no. 1 (August 16, 2022): 59, doi:10.29406/rj.v5i1.4309; Jaja Ahmad Jayus, "Eksistensi Pewarisan Hukum Adat Batak," *Jurnal Yudisial* 12, no. 2 (September 24, 2019): 235, doi:10.29123/jy.v12i2.384.

<sup>4</sup> Maro Youssef, "Strategic Choices: How Conservative Women Activists Remained Active throughout Tunisia's Democratic Transition," *Sociological Forum* 37, no. 3 (2022): 836–55, doi:10.1111/socf.12828.

<sup>5</sup> Wahidah Ideham, "Substitute Heirs in the Compilation of Islamic Law: An Overview from Gender Equality Perspective Case Study of the Religious Courts in Banjarmasin," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 31, 2022): 1054, doi:10.22373/sjhk.v6i2.12466.

<sup>6</sup> Nina Nurmila, "The Spread of Muslim Feminist Ideas in Indonesia: Before and After the Digital Era," *Al-Jami'ah: Journal of Islamic Studies* 59, no. 1 (June 11, 2021): 97–126, doi:10.14421/ajis.2021.591.97-126; Sari Hanafi and Azzam Tomeh, "Gender Equality in the Inheritance Debate in Tunisia and the Formation of Non-Authoritarian Reasoning," *Journal of Islamic Ethics* 3, no. 1–2 (December 27, 2019): 207–32, doi:10.1163/24685542-12340026; Nur Hidayah, "Islamic Law and Women's Rights in Indonesia: A Case of Regional Sharia Legislation," *AHKAM: Jurnal Ilmu Syariah* 19, no. 1 (July 9, 2019), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/11717>.

<sup>7</sup> Béligh Elbalti, "Equality between Men and Women in the Islamic Law of Inheritance," SSRN Scholarly Paper (Rochester, NY, 2018), 4, doi:10.2139/ssrn.3327773.

<sup>8</sup> Ishaq Ahmad, Amir Alam, and Najib Khan and Rahat Ullah, "Inequality Regimes, Patriarchal Connectivity, And Women's Right To Property Inheritance In Rural Pakistan," *Journal of Positive School Psychology*, January 31, 2023, 1251–67.

reforms to ensure gender equality and equal rights for both women and men in inheritance distribution.<sup>9</sup>

The implementation of Islamic inheritance law generates a negative stigma and engenders several commonly received criticisms. In Indonesia, the application of Islamic inheritance law often receives several critiques. These issues are: 1) Gender Discrimination: Criticism that Islamic inheritance law in Indonesia discriminates between the inheritance rights of men and women, thus disadvantaging women and reinforcing gender stereotypes<sup>10</sup>; 2) Limited Application: This criticism involves the incorrect and unjust application of Islamic inheritance law, causing inheritance problems and conflicts<sup>11</sup>; 3) Contradiction with Social Norms: This criticism states that there is a conflict between Islamic inheritance law and local social and cultural norms, making it difficult for society to accept and apply<sup>12</sup>; 4) Rigidity and Limitations: This criticism states that Islamic inheritance law in Indonesia is difficult to adapt to changing situations and contexts because it is too rigid and inflexible.<sup>13</sup>

Criticism towards Islamic inheritance law on its implementation in Indonesia should also be carried out in a balanced and objective manner, without disregarding the fundamental values and objectives of the law. These criticisms should be accepted and analyzed both critically and constructively to understand how Islamic inheritance law can be contextualized and applied in a continuously changing social and cultural environment. Therefore, the implementation of Islamic inheritance law is considered fair and accountable in Indonesia.

Studies focusing on the stigmatization of Islamic inheritance have flourished in the global network. On the other hand, other empirical evidence on inheritance law practices in society has shown that these practices often do not support the applicable Islamic law, as they are interpreted in a discriminatory manner towards heirs.<sup>14</sup> Other studies have highlighted gender disparities in inheritance law, where women often do not receive an equal share of

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<sup>9</sup> Ilham Bettach, "Concepts of Justice and Injustice in the Gender Inheritance-Debate: Flexibility as a Doctrine for Contemporary Ijtihad 2021" 1 (May 28, 2021): 31–44; Hanafi and Tomeh, "Gender Equality in the Inheritance Debate in Tunisia and the Formation of Non-Authoritarian Reasoning."

<sup>10</sup> Abdul Ghofur Anshori, "Sources and Legal Principles of Islamic Inheritance\* Dynamics in Indonesia," *Journal Equity of Law and Governance* 2, no. 2 (October 27, 2022): 157–65, doi:10.55637/elg.2.2.5767.157-165; Retnowulandari Wahyuni, "Gender Perspective in Customary and Islamic Inheritance Law," 2022, <https://eudl.eu/doi/10.4108/eai.3-8-2021.2315073>.

<sup>11</sup> Adlan Adlan, "Perilaku Penundaan Pembagian Warisan dalam Masyarakat Islam di Kelurahan Tanrutedong Kabupaten Sidrap" (undergraduate, IAIN Parepare, 2021), <http://repository.iainpare.ac.id/2347/>; "Pembagian Tidak Adil, Harta Waris Jadi Sumber Konflik," *Universitas Islam Sultan Agung*, accessed February 6, 2023, <https://unissula.ac.id/pembagian-tidak-adil-harta-waris-jadi-sumber-konflik/>.

<sup>12</sup> Jamaludin, "Praktek Pembagian Harta Warisan Keluarga Muslim Dalam Sistem Kewarisan Patrilineal (Studi di Desa Sesetan Denpasar selatan Kota Denpasar)," *Fakultas Syariah UIN Maulana Malik Ibrahim Malang*, November 18, 2013, <https://syariah.uin-malang.ac.id/praktek-pembagian-harta-warisan-keluarga-muslim-dalam-sistem-kewarisan-patrilineal-studi-di-desa-sesetan-denpasar-selatan-kota-denpasar/>.

<sup>13</sup> Defel Fakhyadi, "Patriarkisme Hukum Kewarisan Islam: Kritik Hukum Waris Islam dan Kompilasi Hukum Islam," *Hukum Islam* 21, no. 1 (July 26, 2021): 1–2, doi:10.24014/jhi.v21i1.10447; Faiqah Nur Azizah, "Pembaharuan Dalam Sistem Pembagian Waris Secara Proporsional," *JOURNAL of LEGAL RESEARCH* 3, no. 4 (2021): 511–12, doi:10.15408/jlr.v3i4.20935.

<sup>14</sup> Nur Qalbi Husain and Musyfikah Ilyas, "Praktik Hukum Kewarisan Pada Masyarakat Islam (Studi Kasus Tahun 2017-2019)," *Qadauna: Jurnal Ilmiah Mahasiswa Hukum Keluarga Islam* 1, no. 2 (April 28, 2020): 31–45, doi:10.24252/qadauna.v1i2.12966; Muhammad Al Faruq, "Antara Idealisme Dan Praktek Masyarakat Dalam Pembagian Harta Waris," *Salimiya: Jurnal Studi Ilmu Keagamaan Islam* 1, no. 1 (March 19, 2020): 1–13; Suliyono Suliyono, "Konsep Keadilan Dalam Hukum Waris Perspektif Islam," *Syar'ie : Jurnal Pemikiran Ekonomi Islam* 3, no. 3 (February 10, 2020): 77–101, doi:10.51476/syarie.v3i3.164.

inheritance compared to men, both in terms of quantity and quality of assets.<sup>15</sup> Additionally, research on women's roles in inheritance distribution has shown that women are often less involved in the inheritance distribution process, and the inheritance they receive is often lower than that received by men.<sup>16</sup>

The existence of negative perceptions surrounding Islamic inheritance law can impact its reception and comprehension within society. Hence, it's vital to ensure clear and accurate education and communication about Islamic inheritance law to enhance awareness and understanding. Building upon this foundation, this study seeks to reshape the negative stigma associated with the implementation of Islamic inheritance law, particularly by contextualizing it within the Indonesian context. Through the application of Amina Wadud's hermeneutics of tauhid, this research aims to not only mitigate the stigma surrounding Islamic inheritance but also propose a more adaptable and contextually relevant model for distributing inheritance.

## Method

This study employs a qualitative approach to examine legal norms.<sup>17</sup> This research is a normative legal study that utilizes primary legal materials derived from Law No. 3 of 2006, which refers to amendments made to Law No. 7 of 1989 concerning Religious Courts, Law No. 30 of 1999 concerning Arbitration and Alternative Dispute Resolution, the Compilation of Islamic Law (CIL), and court decisions. The secondary legal materials were obtained from publications, particularly Amina Wadud's publication titled "Quran and Woman," journal articles, and other pertinent sources.

This research employed an interpretative descriptive technique for analysis. This methodology provides a comprehensive account of the specific circumstances and conditions related to the implementation of Islamic inheritance law in Indonesia. The obtained data will undergo qualitative analysis utilizing Amina Wadud's hermeneutics of tawhid.

## Amina Wadud's hermeneutics of *tawhid*

An empirical study conducted by Wadud utilizes the hermeneutical method and focuses on three points: 1. the historical and cultural background in which the text was written (in the case of the Quran, its revelation); 2. the grammatical structure of the text (how it is expressed and what is expressed); and 3. the comprehensive text or worldview. Wadud's emphasis lies not on all the passages present in the Quran, as is the case in traditional exegesis. Instead, she

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<sup>15</sup> Halimah Basri et al., "Inheritance Rights of Women in Makassar Society: A Study of Living Qur'an and Its Implications for Islamic Law," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (October 3, 2022): 537–55, doi:10.22373/sjhc.v6i2.13882; Laksana Arum Nugraheni, Asmin Fransiska, and Putu Devi Kusumawardani, "The Dynamics of Customary Inheritance Law from the Perspective of Gender Equality in Klungkung District-Bali," *International Journal of Research in Business and Social Science (2147- 4478)* 11, no. 1 (February 14, 2022): 283–89, doi:10.20525/ijrbs.v11i1.1601; Amri Panahatan Sihotang, "Reposition of Widow By Death Divorce In Bataknesse Inheritance Law From Gender Perspective," *Diponegoro Law Review* 3, no. 1 (April 30, 2018): 84–103, doi:10.14710/dilrev.3.1.2018.84-103; Muhammad Yusuf and Ismail Suardi Wekke, "Inheritance and Gender Equality," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 15, no. 1 (December 29, 2018): 1–12, doi:10.21154/justicia.v15i1.1436.

<sup>16</sup> Iftitah Utami, "The Role of Women in The Family Against The Distribution of Inheritance in The City of Palembang," *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat* 20, no. 1 (June 30, 2020): 37–48, doi:10.19109/nurani.v20i1.4366; Ulfiani Rahman et al., "Men and Women in The Distribution of Inheritance in Mandar, West Sulawesi, Indonesia," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 27, 2022): 156–75, doi:10.22373/sjhc.v6i1.9094.

<sup>17</sup> Soerjono Soekanto and Sri Mamudji, *Penelitian Hukum Normatif: Suatu Tinjauan Singkat* (Jakarta: Raja Grafindo Persada, 2006), p. 14.

focuses exclusively on the words in the Quran that, according to Wadud, possess universal significance but have been subject to gender-biased interpretations by traditional commentators. Hence, it is necessary to reevaluate these phrases by presenting historical context about the chronology and era of the Quran's revelation. Wadud employs Fazlur Rahman's theory of interpretation. When reading the Quranic text, it is important to take into account the historical context in which the Quranic verses were revealed. Next, it is necessary to pursue the Quran's optimal moral and spiritual principles. Each verse is scrutinized through the following criteria: 1. the circumstances surrounding its revelation; 2. examination of related themes in the Quran; 3. analysis of the linguistic elements and syntactic structure employed in other verses of the Quran; 4. evaluation in light of the fundamental principles outlined in the Quran; and 5. consideration of the Quranic worldview.<sup>18</sup> The Hermeneutics of Tawhid is the name of this approach, authored by Amina Wadud.<sup>19</sup>

Wadud suggests that comprehension of the text can be attained by examining the "Prior Text" through the lens of the individual reader, taking into account both the linguistic aspects and the cultural environment in which the book is being interpreted. The preceding paragraph enhances the reader's knowledge by bridging the gap between the text and its readers from diverse settings.<sup>20</sup> Wadud contends that there is a cultural imposition when interpreting the Quran, but the Quran itself asserts its universality, allowing for its interpretation in many cultural contexts. According to Wadud's interpretation of the Quran, the inheritance verses emphasize the ideals of justice and benefit (*naḥ'a*) as the ideal moral and spiritual values. Both factors are interconnected and indivisible when it comes to determining the allocation of inheritance. Wadud additionally contended that achieving fairness in the allocation of inheritance involves taking into account the advantage (*naḥ'a*) of the beneficiaries who are still alive. Wadud promotes a meticulous analysis of all the laws in the Quran to enable a redistribution of inheritance that aligns with the specific circumstances of the deceased and their heirs. She highlights the significance of doing a comprehensive evaluation of the individuals, combinations, and benefits associated with the distribution of inheritance. Furthermore, Wadud presents an exemplification, demonstrating a situation in which a family consists of a single son and a single daughter. Wadud challenges the decision to give a bigger share to the son while the widow is being maintained by the daughter, stating that it ignores the true benefit of the heirs.<sup>21</sup>

### **Stigmatization of Islamic inheritance law in Indonesia**

Various factors have affected the stigmatization of Islamic inheritance law in Indonesia, such as lack of knowledge and proper understanding of Islamic inheritance law<sup>22</sup>, application of the law that is not in line with the principles of sharia<sup>23</sup>, and stereotypical views of Islam

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<sup>18</sup> Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective*, 2nd edition (New York: Oxford University Press, 1999), 4–5.

<sup>19</sup> *Ibid.*, p. xii.

<sup>20</sup> *Ibid.*, p. 23.

<sup>21</sup> *Ibid.*, p. 87.

<sup>22</sup> Diah Sari Allon Sopia and Nova Orvia, "Kurangnya Pemahaman Masyarakat Tentang Pembagian Harta Waris Di Desa Panggungrejo Kabupaten Blitar," *Jurnal Hukum PRIORIS* 7, no. 1 (2019): 1–8, doi:10.25105/prio.v7i1.14949; Husain and Ilyas, "Praktik Hukum Kewarisan Pada Masyarakat Islam (Studi Kasus Tahun 2017-2019)," p. 41.

<sup>23</sup> Badrah Uyuni and Mohammad Adnan, "Application of Islamic Inheritance Law Among Muslim Society," *El-Arbah: Jurnal Ekonomi, Bisnis Dan Perbankan Syariah* 5, no. 1 (April 1, 2021): 20, doi:10.34005/elarbah.v5i1.1543; Eka Rahayu Purbenazir, "IMPLEMENTASI HUKUM WARIS ISLAM PADA MASYARAKAT KECAMATAN

that have an impact on the stigmatization of Islamic inheritance, especially regarding women's rights<sup>24</sup>. Besides, the lack of knowledge and understanding of Islamic inheritance law results in the non-application of the inheritance law in the community because they think that Islamic inheritance law is difficult to apply.<sup>25</sup> This condition causes delays in the transfer of the testator's property to the heirs<sup>26</sup>, claims on other people's inheritance rights<sup>27</sup>, and conflicts between heirs due to dissatisfaction with the distribution of inheritance property.<sup>28</sup> The stigmatization can affect how the public perceives and understands Islamic inheritance law, which can influence the acceleration or rejection of the law. Therefore, it is important to ensure that Islamic inheritance law is applied and understood correctly and fairly, through proper education and campaigns, as well as through the application of the law into Sharia principles.

### **The need for contextualization of Islamic Inheritance Law in Indonesia**

Contextualizing Indonesia's Islamic inheritance law in present conditions and society is essential to carry out. This will enable the law to offer suitable and equitable resolutions to inheritance matters within the Indonesian Muslim community. Additionally, it aids in maintaining the adherence of Islamic inheritance law to Sharia principles and Islamic values, despite being implemented in many contexts. The necessity for contextualization of Islamic inheritance law in Indonesia arises from various circumstances, including social and cultural diversity, discriminatory practices against specific groups, and issues related to inheritance.

### **Social and cultural diversity**

Due to Indonesia's significant social and cultural variety<sup>29</sup>, it is crucial to comprehend and implement Islamic inheritance law within the right context. The socioeconomic and cultural variety in Indonesia necessitates the contextualization of Islamic inheritance law to accommodate the many customary inheritance practices observed in different regions of the country. In Indonesia, the customary inheritance practices differ among regions, influenced

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KEPAHIANG KABUPATEN KEPAHIANG," *Qiyas : Jurnal Hukum Islam Dan Peradilan* 2, no. 1 (April 11, 2017): 79, doi:10.29300/qys.v2i1.465.

<sup>24</sup> Sugiri Permana, "Kesetaraan Gender Dalam Ijtihad Hukum Waris Di Indonesia," *Asy-Syari'ah* 20, no. 2 (December 21, 2018): 117, doi:10.15575/as.v20i2.3210; Yessy Rahman, "Stereotip Muslimah Pada Film Submission Karya Sutradara Theo Van Gogh: Studi Analisis Semiotika Roland Barthes" 3, no. 2 (October 25, 2022), doi:10.36085/joiscom.v3i2.3914; Amira Nurifkiah M, M. Abdul Somad, and Nurti Budiyananti, "Pandangan Islam Mengenai Stereotip Perempuan Dalam Dunia Politik," *Tadris : Jurnal Penelitian dan Pemikiran Pendidikan Islam* 15, no. 1 (August 28, 2021): 85–94, doi:10.51675/jt.v15i1.115.

<sup>25</sup> Ria Rahma and Mohamed Shafei Mofthah Bosheya, "Islamic Strategy Offers in The Implementation of The Science of Mawarist in Society : Study Centre of Mawarits Studies UNIDA Gontor," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 17, no. 1 (June 2, 2020): 95, doi:10.21154/justicia.v17i1.1732.

<sup>26</sup> Fathul Djannah and Muhammad Rizal, "The Delaying of Inherited Wealth Distribution and Its Impact: A Case Study of Family Fair in Medan City," *Randwick International of Social Science Journal* 1, no. 2 (July 31, 2020): 338–39, doi:10.47175/rissj.v1i2.64; Siti Rohana Mohamad et al., "Determinants of Failure and Delay in the Distribution of Faraid Among Muslims in Kelantan," September 2021, <http://myscholar.umk.edu.my/handle/123456789/2541>.

<sup>27</sup> Lalu Supriadi Bin Mujib, "Revitalisasi hukum waris Islam dalam penyelesaian kasus sengketa tanah waris pada masyarakat Sasak," *Ijtihad : Jurnal Wacana Hukum Islam dan Kemanusiaan* 19, no. 1 (June 1, 2019): 70, doi:10.18326/ijtihad.v19i1.67-88.

<sup>28</sup> Rahma and Bosheya, "Islamic Strategy Offers in The Implementation of The Science of Mawarist in Society," 94–95.

<sup>29</sup> Y. Purwanto et al., "Cultural Diversity and Biodiversity as Foundation of Sustainable Development," *Indonesian Journal of Applied Environmental Studies* 1, no. 1 (April 1, 2020): 2–10, doi:10.33751/injast.v1i1.1976.

by factors such as local culture, religion, and customs<sup>30</sup>. In Indonesia, multiple regions follow the matrilineal inheritance system, which involves the transfer of property and inheritance from the mother to the daughter. Additionally, there exist localities that adhere to a patrilineal system of inheritance, whereby property and inheritance are transferred exclusively from fathers to their sons.<sup>31</sup> Enggano, Minangkabau, and Timor are Indonesian regions that adhere to the matrilineal inheritance system<sup>32</sup>. Meanwhile, the Batak, Bali, Ambon, Irian Jaya, and Dani regions in Indonesia adhere to the patrilineal inheritance system<sup>33</sup>. Additionally, there are several additional regions in Indonesia, including Aceh, Java, Kalimantan, Lombok, Madura, Riau, Sulawesi, South Sumatra, East Sumatra, and Ternate, that also follow the bilateral inheritance system<sup>34</sup>.

Furthermore, the society holds divergent perspectives and beliefs on Islamic inheritance law, which, as previously said, can lead to conflicts and the development of negative perceptions towards this legal framework. Indonesia has at least three prevailing perspectives on the Islamic inheritance concept. The first aspect is Sunni inheritance, which is rooted in the patrilineal customs of Arab society<sup>35</sup>. Secondly, Shi'ah inheritance is distinguished by being parental or bilateral<sup>36</sup>. Furthermore, Hazairin's model of inheritance is founded on his *ijtihad* concerning the wide-ranging cultural and familial variations in Indonesia. Hazairin said that the Qur'an and Hadith prescribe a personalized bilateral inheritance law as the preferred form of inheritance<sup>37</sup>.

### Discriminatory treatment of certain groups

Women as certain groups often face discrimination concerning inheritance rights. To ensure the fair treatment and acknowledgment of all groups' rights, it is essential to contextualize Islamic inheritance law. Cultural and social stereotypes frequently influence the application of this law, resulting in biased inheritance distributions and discrimination, particularly against women. A prevalent stereotype is that women cannot manage finances, leading to their receiving a smaller inheritance share<sup>38</sup>. Additionally, patriarchal culture

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<sup>30</sup> Sonny Dewi Judiasih and Efa Laela Fakhriah, "Inheritance Law System: Considering the Pluralism of Customary Law in Indonesia," *PADJADJARAN JURNAL ILMU HUKUM (JOURNAL OF LAW)* 5, no. 2 (September 24, 2018): 315–30.

<sup>31</sup> Wahyuni, "Gender Perspective in Customary and Islamic Inheritance Law."

<sup>32</sup> "Hukum Pembagian Harta Warisan Yang Berlaku Di Indonesia," accessed February 8, 2023, <https://www.hukumonline.com/berita/a/pembagian-harta-warisan-lt61e8acde312c6/?page=2>.

<sup>33</sup> Kompas Cyber Media, "Sistem Kekerabatan Suku di Indonesia: Parental, Patrilineal, dan Matrilineal Halaman all," *KOMPAS.com*, February 7, 2022, <https://regional.kompas.com/read/2022/02/07/182256378/sistem-kekerabatan-suku-di-indonesia-parental-patrilineal-dan-matrilineal>.

<sup>34</sup> Mohammad Yasir Fauzi, "Legislasi Hukum Kewarisan Di Indonesia," *Ijtimaiyya: Jurnal Pengembangan Masyarakat Islam* 9, no. 2 (2016): 54, doi:10.24042/ijpmi.v9i2.949.

<sup>35</sup> Amir Syarifuddin, *Pelaksanaan Hukum Kewarisan Islam Dalam Lingkungan Adat Minangkabau* (Jakarta: Gunung Agung, 1984), 58, [//perpustakaan.mahkamahagung.go.id/%2Fslims%2Fpusat%2Findex.php%3Fp%3Dshow\\_detail%26id%3D9136](http://perpustakaan.mahkamahagung.go.id/%2Fslims%2Fpusat%2Findex.php%3Fp%3Dshow_detail%26id%3D9136).

<sup>36</sup> *Ibid.*

<sup>37</sup> Hazairin, *Hukum kewarisan bilateral menurut quran dan hadits* (Jakarta: Tintamas Indonesia, 1982), 1, [//opac.fah.uinjkt.ac.id/index.php?p=show\\_detail&id=3817](http://opac.fah.uinjkt.ac.id/index.php?p=show_detail&id=3817).

<sup>38</sup> Esteban Ortiz-Ospina and Max Roser, "Economic Inequality by Gender," *Our World in Data*, March 21, 2018, <https://ourworldindata.org/economic-inequality-by-gender>; "Female inheritance: A key to women's empowerment or another lock on their freedom?," accessed February 14, 2023, <https://voxdev.org/topic/institutions-political-economy/female-inheritance-key-women-s-empowerment-or-another-lock-their-freedom>.

contributes to these disparities<sup>39</sup>, as it is based on a gender role stigma that places women in a subordinate position to men.<sup>40</sup>

### **Inheritance conflicts**

Inheritance disputes frequently occur in the implementation of Islamic inheritance law in Indonesia. Addressing these conflicts through contextualizing Islamic inheritance law can be beneficial. Such conflicts may arise due to the coexistence of multiple legal systems in Indonesia, including Islamic law, the Civil Code, and customary law<sup>41</sup>. Many Muslim communities in Indonesia handle inheritance matters or distribute inheritances according to customary law or other methods<sup>42</sup>. The Islamic inheritance law has long been controversial in Indonesia, often portrayed as a clash between Islamic and non-Islamic law<sup>43</sup>. Additionally, a poor understanding of the Islamic inheritance system can exacerbate conflicts among heirs who perceive that it does not ensure justice<sup>44</sup>. Therefore, contextualizing Islamic inheritance law is crucial to ensure its proper comprehension and application within Indonesia's social and cultural context, addressing inheritance conflicts and discrimination against certain group.

### **Islamic Inheritance Law contextualization towards Negative Stigma framing of *Tawhid* hermeneutics perspective in Indonesia**

To address the negative stigma and discrimination related to the implementation of Islamic inheritance law, the Indonesian government has taken steps to contextualize it. The policy maker had adopted a comprehensive strategy that considers the social and cultural backdrop of Indonesian society, contextualization is anticipated to establish a fairer legal system that aligns with the concepts of justice and benefit<sup>45</sup>. This aligns with Amina Wadud's Hermeneutics, which also highlights the importance of fairness and benefit (*naḥ'ā*) in the allocation of inheritance<sup>46</sup>. The Indonesian government has taken several measures to address the stigmatization of implementing Islamic inheritance law, as seen through the lens of Amina Wadud's hermeneutics.

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<sup>39</sup> Muhammad Haque et al., "Women Rights to Inheritance in Muslim Family Law: An Analytical Study" 4 (April 13, 2020): 21, doi:10.46281/ijibm.v4i1.543.

<sup>40</sup> Faiha Oktrina, "Patriarchy Culture In The Pluridimensional Era Under Islamic Analysis Of Women's Position," *Modern Diplomacy*, April 10, 2022, <https://moderndiplomacy.eu/2022/04/10/patriarchy-culture-in-the-pluridimensional-era-under-islamic-analysis-of-womens-position/>.

<sup>41</sup> Suwarti Suwarti, Decha Khunmay, and Stepan Abannokovya, "Conflicts Occurring Due to the Application of Different Legal Inheritance Systems in Indonesia," *Legality: Jurnal Ilmiah Hukum* 30, no. 2 (September 18, 2022): 214–27, doi:10.22219/ljih.v30i2.21020.

<sup>42</sup> Masut and Agus Saron, "The Implementation System for the Distribution of Inheritance to Muslim Communities in Indonesia in the Perspective of Islamic Law," *Journal of Legal, Ethical and Regulatory Issues* 25, no. 1 (December 20, 2021): 1–1095.

<sup>43</sup> Mark Cammack, "Islamic Inheritance Law in Indonesia: The Influence of Hazairin's Theory of Bilateral Inheritance," *Australian Journal of Asian Law* 4 (2002): p. 295.

<sup>44</sup> Inna Fauziatul Ngazizah and Nabila Luthvita Rahma, "Unification of Islamic Inheritance Law Against the Plurality of Indonesian Muslims" (1st International Seminar on Sharia, Law and Muslim Society (ISSLAMs 2022), Atlantis Press, 2022), 313, doi:10.2991/978-2-494069-81-7\_31.

<sup>45</sup> Siti Mahmudah, "The Contextualization of Sharia and Its Contribution to The Development Of The Indonesian National Law," *Al-'Adalah* 16, no. 1 (July 29, 2019): 17–40, doi:10.24042/adalah.v16i1.3393; Masut and Saron, "The Implementation System for the Distribution of Inheritance to Muslim Communities in Indonesia in the Perspective of Islamic Law"; Suliyono, "Konsep Keadilan Dalam Hukum Waris Perspektif Islam."

<sup>46</sup> Wadud, *Qur'an and Woman*, p. 87.



## Understand and fight for Islamic inheritance law

Inheritance law within the specific context of Indonesia. To advocate for the implementation of Islamic inheritance law in Indonesia, the government should actively pursue reforms in Islamic family law and ensure that the legal system accommodates the many laws prevalent in the country. The comprehension and implementation of Islamic inheritance law in Indonesia should take into account the country's various traditions and customs. Based on that rationale, the Indonesian government has incorporated and codified Islamic inheritance into the country's legal system<sup>47</sup>. This is demonstrated by the presence of Law No. 3 of 2006, which amends Law No. 7 of 1989 regarding Religious Courts. The amendment grants Religious Courts the power to handle, adjudicate, and settle inheritance cases for individuals who follow the Muslim faith. Additionally, the provision allowing individuals to choose which law to apply in the distribution of inheritance has been abolished. Consequently, those who identify as Muslims are exclusively permitted to seek resolution for inheritance disputes in the Religious Courts. The legal framework utilized to address such matters is Islamic law, as outlined in Presidential Instruction No. 1 of 1991, also referred to as the Compilation of Islamic Law. While there exists a collection of Islamic law that offers regulations on inheritance, it serves as a mere guideline and is not obligatory for judges to enforce. Regarding the interpretation of tawhid, which highlights the assurance of fairness in the implementation of inheritance law, the government must establish legislation governing Islamic inheritance.

## Reconstruct the basic concepts of Islamic inheritance law under the Indonesian context

The reconstruction of Islamic inheritance law is necessary to ensure the proper application of fundamental ideas such as inheritance rights, inheritance shares, and handling of inheritance in the Indonesian setting. In Indonesia, the principles of Islamic inheritance law are applied while considering the various social and cultural situations<sup>48</sup>. Indonesia is a nation characterized by a multitude of ethnicities, tribes, and customs. Hence, it is imperative to consider this variation and uphold the cultural heterogeneity of Indonesian society when implementing Islamic inheritance law. The tactics employed in this endeavor involve the application of the notion of joint property (*gonogini*), with a focus on highlighting the adaptability of Islamic inheritance and the discretionary powers of the judge.

## Application of the concept of *gonogini* property or joint property

Islamic inheritance law, the concept of joint property or *gonogini* refers to the principle that the assets acquired by a husband and wife during the marriage are considered joint property to be divided between the spouses and their heirs after one of them passes away<sup>49</sup>. The concept of joint property is relatively new as it was not applied in early Islam. The allocation of joint property is based on the system of family ties, and the roles, and responsibilities of husbands and wives within the context of Indonesian society<sup>50</sup>. Provisions

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<sup>47</sup> Fauzi, "Legislasi Hukum Kewarisan Di Indonesia."

<sup>48</sup> Muhammad Patri Arifin, "Konsep Penerapan Hukum Kewarisan Islam Nusantara," *Bilancia: Jurnal Studi Ilmu Syariah Dan Hukum* 11, no. 1 (June 1, 2017): 93–120, doi:10.24239/blc.v11i1.300.

<sup>49</sup> Dwi Anindya Harimurti, "Perbandingan Pembagian Harta Bersama Menurut Hukum Positif Dan Hukum Islam," *Jurnal Gagasan Hukum* 3, no. 02 (December 29, 2021): 149–71, doi:10.31849/jgh.v3i02.8908.

<sup>50</sup> Efrinaldi Efrinaldi et al., "Pembagian Harta Bersama Istri Turut Mencari Nafkah Perspektif Hukum Islam Dan Hukum Positif Di Indonesia," *El-Izdiwaj: Indonesian Journal of Civil and Islamic Family Law* 2, no. 2 (2021): 82–104, doi:10.24042/el-izdiwaj.v2i2.11041.

regarding joint property are regulated in Marriage Law no. 1 of 1974 in articles 35-37, which state that in the event of marriage dissolution, joint property is regulated according to the respective laws.

The marriage law does not provide a technical description of the division of joint property, but in the Compilation of Islamic Law, it is stipulated in Article 96 verse 1 that "in the event of divorce due to death, half of the joint property becomes the right of the surviving spouse." Therefore, if the marriage ends due to death, before the assets are distributed according to inheritance laws, half of the inheritance acquired during the marriage will be given to the surviving spouse (husband or wife). The remaining assets after the joint property has been allocated will then be distributed according to inheritance laws. The application of *gonogini* is in line with the hermeneutics of tawhid, especially in providing security for the husband or wife, but unfortunately, the rules in the compilation of Islamic law are not binding as they are not in the form of legislation. If this principle were to be included in a legal framework, it would undoubtedly be beneficial for spouses who are left behind.

### **The Flexibility of Islamic Inheritance**

In the context of Islamic heritage in Indonesia, flexibility sharing refers to the ability to adjust the division of heritage to the needs and social justice of the family. This basis allows adjustment of the division of inheritance taking into account the conditions and interests of the heirs concerned so that the rules of Islamic heirs are not rigid. In connection with the inheritance from different religious backgrounds, there is a growing movement to redefine that heritage. It aims to give inheritance rights to heirs of different religions. In the context of Indonesia, which is not a war territory, distinctions such as "*kafir dzimmi*" and "*kafir harbi*" become irrelevant anymore. This shift prompted the assignment of inheritance to heirs of different religions, although it is currently still through a mandatory will procedure<sup>51</sup>. In other cases, the 2:1 ratio rule on the division of male and female heirs can be reinterpreted and adjusted to specific circumstances or events, thus allowing to switch to a 1:1 ratio in the inheritance division.

Division of inheritance by 2:1 based on the Quran's letter al-Nisa' (4) paragraph 11 refers to the compilation of the Islamic Law chapter 176 which reads: "If the daughter is only one, then she gets half, if two or more of them get two-thirds, and if the daughter with the boy, then the boy's share is two against one with the girl." However, in its application, the judge may make other decisions according to the context. This was demonstrated by the judge of the Field Religious Court who gave a 1:1 portion to the male and female heirs as stipulated in the Field Religious court decision No. 92/Pdt.G/2009/PA.Mdn<sup>52</sup>. "The judge's judgment concerning the division of the inheritance as in the above, neither in the verse of the Qur'an nor in the KHI is a death price a provision that will never be changed again, especially if the problem relates to the sense of justice of the heirs, and the feeling of justice itself is a 'will of law (which can lead to a change of law)."<sup>53</sup> This condition follows the hermeneutics of the Wadud which also

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<sup>51</sup> Khairul Hasbi Hutagaol and Zainal Arifin Purba, "Inheritance of Different Religions from the Perspective of Shaykh Yusuf Al-Qaradhawi," *JURNAL AKTA* 10, no. 4 (December 17, 2023): 339–55, doi:10.30659/akta.v10i4.35236; Ahmad Qiram As-Suvi and Erfaniah Zuhriah, "Ratio Legis of Interfaith Inheritance Reformulation From The Perspective of Fiqh Minority: A Study of The Thoughts of Yusuf Al-Qardhawi And Taha Jabir Al-Alwani," *Jurnal Pembaharuan Hukum* 10, no. 3 (December 18, 2023): 361–86, doi:10.26532/jph.v10i3.33335.

<sup>52</sup> Azizah, "Pembaharuan Dalam Sistem Pembagian Waris Secara Proporsional."

<sup>53</sup> Ibid.

states that 2:1 is not absolute. Based on the values of justice and *naf'a*, the division of inheritance requires the consideration of the whole member, combination, and benefit<sup>54</sup>.

### Judge's Discretion

There is a shift in the role of judges in the Indonesian legal system. Previously, judges functioned as legal mouthpieces in the civil law tradition that characterizes the Indonesian legal system. However, Indonesia currently adopts a hybrid approach between the common law system and the Anglo-Saxon civil law system. The Indonesian legal system adheres to the principle of legality, whereby an act cannot be punished if it is not first regulated by law. However, at the same time, the law also emphasizes that judges in making decisions must explore, follow, and understand the legal values prevailing in society<sup>55</sup>.

Judges are required to consider various phenomena about deciding cases outside the written rules, namely by exploring the norms that live and apply in society for the sake of justice. The role of judges in upholding justice through discretion can be seen in several cases, for example in the issue of marriage dispensation<sup>56</sup>, divorce procedures that prioritize gender equality<sup>57</sup>, and also in the issue of inheritance of heirs of different religions through mandatory wills (*wasiat wajibah*)<sup>58</sup>. These are the provisions of Law Number 48 of 2009 concerning Judicial Power in Article 5 paragraph (1) which states: "Judges and constitutional judges are obliged to explore, follow, and understand the values of law and the sense of justice that lives in the community". On the other hand, Presidential Instruction of the Republic of Indonesia Number 1 of 1991 concerning the Compilation of Islamic Law in article 229 states: "Judges in resolving cases submitted to them, must pay close attention to the legal values that live in the community so that their decisions are following a sense of justice". Judging from the hermeneutics of *tawhid*, there need to be additional provisions that guide judges in exercising discretion, namely that discretion needs to consider the value of justice and benefit (*naf'a*) for the heirs.

### Deliberation or mediation in Inheritance conflict resolution

Increased understanding and resolution of inheritance conflicts must be motivated by the holding of deliberation or mediation. In practice, Indonesian communities often use deliberation or mediation mechanisms in resolving inheritance disputes. The principles of deliberation and mediation are in line with Islamic values that encourage dispute resolution through dialog and mutual agreement<sup>59</sup>. In this case, the Indonesian government also facilitates by providing legislation regarding deliberation or mediation mechanisms in the

<sup>54</sup> Wadud, *Qur'an and Woman*, p. 87.

<sup>55</sup> ALI MA'SUM H. ENDANG, "Diskresi Hakim Dalam Pembaharuan Hukum Kewarisan Islam Di Indonesia (Studi Terhadap Putusan Mahkamah Agung Dalam Penerapan Wasiat Wajibah Bagi Ahli Waris Non Muslim)" (doctoral, UIN RADEN INTAN LAMPUNG, 2022), 11–12, <http://repository.radenintan.ac.id/18820/>.

<sup>56</sup> M. Syuib Syuib and Nadhilah Filzah, "Kewenangan Hakim Menerapkan Diskresi dalam Permohonan Dispensasi Nikah (Studi Kasus di Mahkamah Syar'iyah Jantho)," *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 2, no. 2 (May 29, 2019): 433–64, doi:10.22373/sjkh.v2i2.4747.

<sup>57</sup> Ramadhita Ramadhita, Mahrus Ali, and Bachri Syabbul, "Gender Inequality and Judicial Discretion in Muslims Divorce of Indonesia," *Cogent Social Sciences* 9, no. 1 (December 31, 2023): 2206347, doi:10.1080/23311886.2023.2206347.

<sup>58</sup> H. Endang, "Diskresi Hakim Dalam Pembaharuan Hukum Kewarisan Islam Di Indonesia (Studi Terhadap Putusan Mahkamah Agung Dalam Penerapan Wasiat Wajibah Bagi Ahli Waris Non Muslim)"; Hutagaol and Purba, "Inheritance of Different Religions from the Perspective of Shaykh Yusuf Al-Qaradhawi."

<sup>59</sup> Tyara Maharani Permadi, Djanuardi Djanuardi, and Hazar Kusmayanti, "Penyelesaian Sengketa Waris Dalam Masyarakat Adat Kampung Naga Berdasarkan Hukum Islam Dan Hukum Adat," *Kertha Semaya : Journal Ilmu Hukum* 9, no. 10 (August 12, 2021): 1826–27, doi:10.24843/KS.2021.v09.i10. p. 08.

distribution of inheritance to avoid conflict, with the provisions in the Compilation of Islamic Law (KHI) Article 183 which states: "The heirs can agree to make peace in the division of inheritance after each realizes its share".

In many cases, deliberation and mediation can achieve a satisfactory solution for all parties without the need to involve a formal judicial process. This non-litigation mediation in Indonesia is known as Alternative Dispute Resolution (ADR) which is regulated in Article 1 point 10 of Law number 30 of 1999 concerning Arbitration and Alternative Dispute Resolution<sup>60</sup>. Alternative Dispute Resolution has advantages over dispute resolution through litigation, including the voluntary nature of the process because there is no element of coercion, fast procedures, non-judicial decision-making, confidential procedures, flexibility in determining the terms of problem-solving, saving time and cost savings, high likelihood of implementing agreements and maintaining working relationships<sup>61</sup>. Deliberation or mediation in the resolution of inheritance conflicts is very important because it guarantees justice and benefits for the heirs by the hermeneutics of Tawhid. By conducting a deliberation or mediation process, the parties involved in the inheritance dispute have the opportunity to discuss and negotiate based on the principles of justice and equality as embraced in the hermeneutic perspective of Tawhid. This approach allows for a thorough consideration of individual circumstances, family dynamics, and community norms, to ensure that the distribution of inheritance is in line with the letter and spirit of Islamic principles. In addition, through mediation or deliberation, solutions can be created that not only pay attention to legal aspects but also uphold the broader values of love, solidarity, and mutual respect within the family unit.

## Conclusion

This research depicts the stigmatization that occurs in Islamic inheritance law. This stigmatization is rigid and conservative, caused by a lack of knowledge and understanding of Islamic inheritance law, the application of laws that do not conform to Sharia principles, and stereotypical views of Islam, particularly regarding women's inheritance rights. Therefore, contextualizing Islamic inheritance law in Indonesia is necessary to ensure that it aligns with the current situation and conditions of Indonesian society. From the perspective of the hermeneutics of Tawhid, the contextualization of Islamic inheritance must prioritize the values of justice and benefit (*naʿa*) in several aspects, including adopting a more inclusive approach and considering the socio-cultural context of the community, including understanding and advocating for human rights. Additionally, the inheritance law in Indonesia has reconstructed its basic Islamic concepts to align with the Indonesian context and encourages deliberation or mediation to resolve issues related to inheritance.

The study of contextualization towards Islamic inheritance law showed valuable insights into the contextualization of Islamic inheritance law in Indonesia. However, there are limitations regarding the scope of contextualization and the lack of comparative analysis. The research results focus on the efforts made by the Indonesian government in contextualizing Islamic inheritance law from the perspective of the hermeneutics of Tawhid. Therefore, future

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<sup>60</sup> Ranny Apriani Nusa, Sitti Marwah, and Shera Yunita, "Mediasi Non Litigasi Terhadap Sengketa Pembagian Harta Warisan Di Kecamatan Moutong Kabupaten Parigi Moutong Provinsi Sulawesi Tengah," *Qiyas : Jurnal Hukum Islam Dan Peradilan* 6, no. 1 (April 5, 2021), doi:10.29300/qys.v6i1.4344.

<sup>61</sup> Rifqani Nur Fauziah Hanif, "Arbitrase Dan Alternatif Penyelesaian Sengketa," Desember 2020, <https://www.djkn.kemenkeu.go.id/kpknl-manado/baca-artikel/13628/Arbitrase-Dan-Alternatif-Penyelesaian-Sengketa.html>.

research could involve broader socio-cultural factors where the application of inheritance practices exists at a deeper level. A more comprehensive examination of societal attitudes, beliefs, and practices could also provide a more holistic understanding of the contextualization process. Additionally, this research does not extensively compare the results and implications of Indonesia's approach to those of other countries facing similar challenges. Thus, future research is expected to provide a comparative analysis with a richer perspective on the effectiveness of various contextualization strategies and their potential impact.

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