



## **Flexibility of Women’s Inheritance Distribution in Jambi Malay Society: Compromising Islamic and Customary Law**

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### **Abstract**

The position of men and women before Islam came was not the same. Men are considered dominant, so women do not have the same rights, including in Islamic inheritance law. This study aimed to determine women's position in the division of inheritance in the Jambi Malay community. This study uses the social legal research method to understand legal phenomena from the social and cultural context in which the law exists. The primary data for this study came from in-depth interviews with religious and traditional leaders, while the secondary data was obtained from relevant literature. The data is then analyzed by editing, organizing, and grouping the research results. The study results indicate legal dualism in inheritance distribution in the Jambi Malay community, namely Islamic and customary law. However, customary law dominates compared to Islamic law. In practice, the flexibility of women's inheritance distribution in the Jambi Malay community aims to find out about the negotiations of the Jambi Malay community in dealing with the equalization of men and women in the distribution of inheritance. Equality is permitted in Islam because, in practice, there must be agreement and approval from each heir.

**Keywords:** Flexibility, harmonization, negotiation, inheritance, customary law

### **Abstrak**

*Kedudukan antara laki-laki dan perempuan sebelum Islam datang tidaklah sama. Laki-laki dianggap dominan, sehingga perempuan tidak mempunyai hak yang sama, termasuk dalam hukum kewarisan Islam. Tujuan penelitian ini adalah untuk mengetahui posisi perempuan dalam pembagian waris pada masyarakat Melayu Jambi. Penelitian ini menggunakan metode hukum sosiologis yang bertujuan untuk memahami fenomena hukum dari konteks social dan budaya dimana hukum itu berada. Data primer penelitian ini berasal dari wawancara mendalam dengan tokoh agama dan adat sedangkan data sekunder diperoleh dari literatur yang relevan. Data tersebut kemudian dianalisis melalui editing, pengorganisasian dan pengelompokan hasil penelitian. Hasil penelitian menunjukkan bahwa terdapat dualisme hukum dalam praktek pembagian waris pada masyarakat melayu Jambi yaitu hukum Islam dan hukum adat. Namun hukum adat terlihat lebih mendominasi dibandingkan hukum Islam. Dalam prakteknya fleksibilitas pembagian waris perempuan pada masyarakat melayu Jambi bertujuan untuk mengetahui tentang negosiasi masyarakat melayu Jambi dalam mensiasati penyetaraan laki-laki dan perempuan pada pembagian waris. Penyetaraan tersebut diperbolehkan dalam Islam karena dalam prakteknya harus adanya kesepakatan dan persetujuan dari setiap ahli waris.*

**Kata Kunci:** *Fleksibilitas, harmonisasi, negosiasi, kewarisan, hukum adat*

### **Introduction**

The position between men and women before Islam came was not the same. Men are considered dominant, so women do not have the same rights. This assessment is considered unfair when paying attention to the reality of heirs in Islam today compared to the social fact at the beginning of Islam's development in the Arab nation.<sup>1</sup> Most women have not been able to actualize their freedom as human beings, both in their capacities as individuals and as members of society.<sup>2</sup>

Along with the development of the times, discrimination against women needs attention because, in the reality of social culture, there are still people who are fixated on old stereotypes and view the existence of women as only the area of

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<sup>1</sup> 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 (2022). Rajab Rajab, et.al., "Islamic Inheritance Law in Saruaso and Sawah Tengah Villages Based on Islamic Principles," *Jurnal Ilmiah Islam Futura* 22, No. 2 (2022). Anjar Kususiyanah, "Keadilan Gender Dalam Kewarisan Islam: Kajian Sosiologis Historis," *Al-Mazahib: Jurnal Perbandingan Hukum* 9, No. 1 (2021), p. 63–82.

<sup>2</sup> Rachel Woodlock, "The Masjid Is for Men: Competing Voices in the Debate about Australian Muslim Women's Access to Mosques," *Islam and Christian-Muslim Relations* 21, No. 1 (2010), p. 51–60.

"kitchen, well and bed.<sup>3</sup> In other words, women are only in charge of cooking, cleaning, and washing and those related to the household.<sup>4</sup> Sticking to the division of labor between men and women has been believed to be valid for a long time and has become a common phenomenon.<sup>5</sup>

Nowadays, equality emphasizes rights and obligations between men and women, which are associated with gender equality, emancipation, and feminism.<sup>6</sup> Gender activists disagree and think there is injustice, especially in the division of inheritance rights in Islam,<sup>7</sup> so they ask for and try to reinterpret this part of the inheritance, especially women's rights. The philosophical distribution of the estate is 2:1 because men's responsibilities are considered more significant than women's, so men's rights are more than women. As stated in the al Qurán Surat al Nisa (4: 34) *al rijalu qawwamuna al nisa*.<sup>8</sup>

The phenomenon that is happening now is that many women are the backbone of the family and do not only take care of the kitchen, wells, and mattresses.<sup>9</sup> So the legal reasons for a woman's right to inherit must change, as the law can change when the law's intention changes according to the evolving circumstances of the times and time.<sup>10</sup> Inheritance law is a social response in which

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<sup>3</sup> Darmin Tuwu, "Peran Pekerja Perempuan Dalam Memenuhi Ekonomi Keluarga: Dari Peran Domestik Menuju Sektor Publik," *Al-Izzah: Jurnal Hasil-Hasil Penelitian* 13, No. 1 (2018): 63.

<sup>4</sup> Lois M. Shelton, "Female Entrepreneurs, Work-Family Conflict, and Venture Performance: New Insights into the Work-Family Interface," *Journal of Small Business Management* 44, No. 2 (2006), p. 285–97.

<sup>5</sup> Tri Wahyu Hidayati, Ulfah Susilawati, and Endang Sriani, "Dynamics of Family Fiqh : The Multiple Roles of Women in Realizing Family Resilience" *Ijtihad: Jurnal Wacana Hukum Islam dan Kemanusiaan* 22, No. 2 (2022), p. 219–38.

<sup>6</sup> Sugiri Permana, "Kesetaraan Gender dalam Ijtihad Hukum Waris di Indonesia", *Asy-Syariah* 20, No. 2 (2018), p. 117-32.

<sup>7</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. 7 (2022), p. 537-555.

<sup>8</sup> Magaji Chiroma, et.al., "Islam Versus Gender Equality: The Reality About the Islamic Principle of Mithlu Hazzi Al-Unthayayn (Two Female Portion Is Equivalent To a Male Portion, 2:1) in the Distribution of a Deceased's Estates," *European Scientific Journal* 10, No. 19 (2014), p. 1857–7881. Ananda Luthfiyyah Azwan. et. al., "Memaknai Pemenuhan Hak-Hak Perempuan Dalam Implementasi Cedaw Terhadap Pembagian Waris Islam," *AL- IMARRAH: Jurnal Pemerintahan Dan Politik Islam* 6, No. 1 (2021), p. 122–42. Endah Amalia, "Penyetaraan Gender Dalam Hal Pembagian Waris," *Jurnal Ahkam* 8, No. 2 (2020), p. 213-232.

<sup>9</sup> Soleh Hasan Wahid, "Kontekstualisasi Konsep Nafkah Ramah Gender Perspektif Murtadha Muthahhari dan Faqihuddin Abdul Kodir", *al-Syakhsyiyah: Journal of Law & Family Studies* 1, No. 2 (2019), p. 255-79.

<sup>10</sup> Warto Ahmad Saifuddin, "The Rights of Women's Heritage In An-Nisa Letter's Prespective Between Theory, Practice And Relevance In The Context of Indonesia," *SSRN Electronic Journal*, (2020), p. 91.

the legal *illat* is the sociological construction of society.<sup>11</sup> This necessitates legal reform in several Islamic legal rules so that they can "live" in the sense of being grounded so that they can solve existing problems.<sup>12</sup>

Indeed, long before the existence of the feminist movement, Islam came through the Prophet Muhammad by bringing enlightenment to women and the principles of justice and equality of all human beings before Allah SWT.<sup>13</sup> Likewise, in the aspect of inheritance, prioritizing the concept of justice and equality between men and women because, in principle, the law respects fair values in the sense of being equal without discriminating between sex differences.<sup>14</sup> One of the sensitive issues related to this issue is the equality in inheritance between men and women in terms of lineage and the 2:1 formula between them.<sup>15</sup>

In the academic realm, research on inheritance traditions has been carried out by several scholars who have the same object of study, including the work of Miftahul Huda<sup>16</sup> Muhammad Burhan,<sup>17</sup> Reni Nur Aniroh,<sup>18</sup> Endang Sriani,<sup>19</sup>

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<sup>11</sup> Tedi Supriyadi, "Reinterpretasi Kewarisan Islam Bagi Perempuan," *Sosioreligi: Jurnal Kajian Pendidikan Umum* 14, No. 2 (2016), p. 65–78.

<sup>12</sup> Jasser Auda, *Maqasid al Shariah as Philosophy of Islamic Law : A Systems Approach* (London: The International Institute of Islamic Thought, 2008), p. 201. Ahmad Bunyan Wahib, "Reformasi Hukum Waris Di Negara-Negara Muslim," *Asy-Syir'ah Jurnal Ilmu Syari'ah Dan Hukum* 48, No. 1 (2014): 29–54.

<sup>13</sup> Yuangga Kurnia Yahya, "Pengaruh Penyebaran Islam Di Timur Tengah Dan Afrika Utara : Studi Geobudaya Dan Geopolitik," *Ayaaq* 8, No. 5 (2019): 55.

<sup>14</sup> Endah Amalia, "Penyetaraan Gender Dalam Hal Pembagian Waris," *Jurnal Ahkam* 8, No. 2 (2020): 216.

<sup>15</sup> Ali Abubakar, et.al., "The Postponement of the Implementation of Inheritance Distribution in The Seunuddon Community, North Aceh in The Lens Of 'Urf Theory and Legal Pluralism," *el-Usrah* 6, No. 2 (2023), 430-443

<sup>16</sup> Miftahul Huda, et.al., "Fiqh and Custom Negotiation in Avoiding Inheritance Dispute Tradition among Mataraman Society East Java," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 15, No. 2 (2020), p. 224–50.

<sup>17</sup> Muhammad Burhan, "Kedudukan Dan Hak Perempuan Sebagai Ahli Waris Dalam Hukum Kewarisan Indonesia (Tinjauan Hukum Perdata, Adat dan Islam)," *Mahkamah* 2, No. 2 (2017), p. 283–326.

<sup>18</sup> Reni Nur Aniroh, "Mempertegas Ide Kesetaraan Gender dalam Sistem Kewarisan Bilateral : Sistem Waris Bilateral Pasca Hazairin," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 13, No. 2 (2020), p. 119–38.

<sup>19</sup> Endang Sriani, "Fiqh Mawaris Kontemporer: Pembagian Waris Berkeadilan Gender," *TAWAZUN : Journal of Sharia Economic Law* 1, No. 2 (2018), p. 133

Halimah Basri,<sup>20</sup> Dian Mustika,<sup>21</sup> Sidik Tono,<sup>22</sup> Nuraida Aida Fitri Habi,<sup>23</sup> Ibrahim Yilmaz,<sup>24</sup> Farhana Mahmud,<sup>25</sup> Sonia Bhalotra<sup>26</sup>.

This research differs from Odeola Olufunke Kehinde<sup>27</sup>, Ezeilo Joy Ngozi,<sup>28</sup> Isa Khan,<sup>29</sup> Mahtab Ahmad,<sup>30</sup> who concluded that there had been a gap in the distribution of inheritance where men have full rights to inherit because they are considered the backbone of the family. The responsibility of men is greater than that of women, while women have no right to inherit at all<sup>31</sup> because they have received a dowry as compensation for inheritance rights. The research position on the Flexibility of Women's Inheritance Division in the Jambi Malay Community aims to find out about the negotiations of the Jambi Malay community in dealing with the equalization of men and women in the distribution of inheritance. Equality is

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<sup>20</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 (2022), p. 537-55.

<sup>21</sup> Dian Mustika and Wenny Dastina, "Religious, Economic, and Political Values Shifting in Inheritance System of Suku Anak Dalam," *Ahkam: Jurnal Ilmu Syariah* 20, No. 1 (2020), p. 49-78.

<sup>22</sup> Sidik Tono et al., "The Harmonious Relationship between Minangkabau Custom and Islam in the Distribution of Inheritance," *Al-Shajarah: Journal of the International Institute of Islamic Thought & Civilization*, (2019) Special Issue Sharia hand Law (2019), p. 39-55.

<sup>23</sup> Nur Aida Fitri Habi, *Hukum Waris Islam dan Keadilan Gender dalam Seloko Adat Jambi pada Hukum Pucuk Induk Undang nan Limo*, (Jakarta: Publica Indonesia Utama, 2022): 142.

<sup>24</sup> Ibrahim Yilmaz, "Islam Hukukunda Kız Çocuğunun Mirastaki Payının Cinsiyet İle Temellendirilmesine Analitik Bir Bakış: An Analytical Overview on the Girls Inheritance Share Based on Gender in Islamic Law," *Cumhuriyet Theology Jurnal* 22, No. 1 (2018), p. 347-76.

<sup>25</sup> Farhana Mehmood, et. al., "An Anthropological Perspective of Female Share in Inheritance: An Appraisal of Gender Gap between Islamic Law and Practice," *Journal of Islamic Thought and Civilization* 12, No. 1 (2022), p. 200-21.

<sup>26</sup> Sonia Bhalotra, et.al., "Women's Inheritance Rights Reform and the Preference for Sons in India," *Journal of Development Economics* 146 (2020).

<sup>27</sup> Adeola Olufunke Kehinde, Sunday Kolawole Iyaniwura, and Chikaodili Adimoha, "Examination of the Right of a Female Child to Inheritance: Eastern Nigeria Context," *Prawo i Wiesz* 2022, no. 39 (2022), p. 345-69.

<sup>28</sup> Joy Ngozi Ezeilo, "Rethinking Women and Customary Inheritance in Nigeria," *Commonwealth Law Bulletin* 47, no. 4 (2021), p. 706-18.

<sup>29</sup> Issa Khan et al., "The Right of Women in Property Sharing in Bangladesh: Can the Islamic Inheritance System Eliminate Discrimination?," *SpringerPlus* 5, no. 1 (2016).

<sup>30</sup> Mahtab Ahmad, Moazma Batool, and Sophia F. Dziegielewski, "State of Inheritance Rights: Women in a Rural District in Pakistan," *Journal of Social Service Research* 42, no. 5 (2016), p. 622-29.

<sup>31</sup> Yasmin Khodary, "What Difference Cant It Make ? Assessing the Impact of Gender Equality and Empowerment in Matters of Inheritance in Egypt," *The Journal of the Middle East and Afrika* 9, No. 2 (2018), p. 173-193.

permitted in Islam because, in practice, there must be agreement and approval from each heir.<sup>32</sup>

This study uses the social, legal research method, namely research that studies law using a combined legal science approach to examine legal phenomena from the social and cultural context in which the law exists.<sup>33</sup> The primary data of this study came from the results of in-depth interviews with Jambi Province religious and traditional leaders as representatives. At the same time, secondary data was obtained from relevant literature information. Both data types are then analyzed through editing, organizing, and grouping research results.<sup>34</sup>

### **Partnership and Justice in Inheritance**

The theme of new partnership emerged in "Islamic legal thought" when awareness of equal rights and obligations, human values, freedom, and justice between humans (men and women) began to spread due to the industrial revolution and the post-renaissance cultural revolution from the West. The problem of partnership is slowly but surely seeping in and applying to the Islamic world, so it is felt that there is a problem (at both the discourse and empirical levels).

Islamic law is present in the world for nothing but to liberate humans from various forms of injustice. If Islamic law is used as a guide by society but is not in line with the principles of justice, that norm must be rejected.<sup>35</sup> Likewise, if there are various forms of injustice against women, especially by using the argument of Islamic law as justification, then this injustice must be abolished. Relations between humans in Islamic law are based on the principle of equality/balance and partnership (QS. At-Taubah ayat 71), and benefit, which is based on justice. Textually, Islamic law recognizes differences (*distinctions*) between men and women, but the difference is not a distinction (*discrimination*) that benefits one party and harms the other. This difference is only to support the primary mission of Islamic law in family

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<sup>32</sup> M. Khoiroh, & Syakur, A. S., "The flexibility of Islamic law in the Ganjur tradition in Lamongan, Indonesia." *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 23, No. 2 (2023), p. 139–159.

<sup>33</sup> Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research*, (London: Pearson Education Limited, 2007), p. 257. Adriaan W Bedner et. al., *KAJIAN SOSIO-LEGAL*, n.d (Denpasar: Universitas Indonesia, Universitas Leiden, Universitas Groningen, 2012).

<sup>34</sup> Michel Huberman Matthew B Miles, *Qualitative Data Analysis*, Sage Publications Ltd, 2014, p. 20.

<sup>35</sup> Nur Alfy Syahriana and Zaenul Mahmudi, "The Principle of Segendong Sepikul in the Inheritance Distribution System of the Muslim Community from the Perspective of Multidisciplinary Studies", *De Jure: Jurnal Hukum dan Syar'iyah* 14, No. 2 (2022), p. 195-210.

law: "creating a harmonious relationship based on compassion (*mawaddah warahmah*) in the family environment."<sup>36</sup>

The principle of equality/balance of rights between men and women to obtain political rights, education, inheritance, testimony, and others.<sup>37</sup> When men and women have the same rights over all their potential in that order, the consequence is that both men and women have the right to develop their rational abilities. Likewise, Islamic law does not tolerate differences and discrimination but presents equality in terms of worship and *muamalah*<sup>38</sup> and stipulates that men and women receive the same reward for their good deeds.<sup>39</sup> This shows that men and women have equal/balanced obligations to carry out orders and prohibitions in religion.

In inheritance law, there is no difference in principle between men and women. They have the same rights, but the portion is different.<sup>40</sup> Justice in Islamic inheritance law is taught to be balanced, not equal. An example of an inheritance sentence "*yusikumullahu fi awladikum*" contains the command that the share of the male is twice that of the female. The reason for this division is based on the roles and financial obligations of men in the family<sup>41</sup> and the justification that men have a higher degree than women. Besides that, the burdens carried by men are heavier than just providing a living and paying a dowry. In paragraph 12, it is explained that the distribution of inheritance must be carried out must be fulfilled by the dependents, including carrying out the will and fulfilling all debt obligations.

According to Syahrur, this verse still leaves problems that still need to be found a solution. In his limit theory, Syahrur explains that there are provisions for maximum limits and minimum limits in carrying out Allah's law because Islamic law is elastic.<sup>42</sup> so this verse about inheritance is an effort to improve the position of women in society by adjusting the social conditions of society according to the era

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<sup>36</sup> Masyithah Umar et al., "Indahnya Kemitraan Laki-laki dan Perempuan Dalam Hukum Islam," *Journal of Islamic and Law Studies* 3, No. 1 (2019), p. 163.

<sup>37</sup> Iza Hanifuddin, "Posisi Perempuan Minangkabau dalam Sistem Ulayat Menurut Adat Matrilineal dan Syarak," *Juris: Jurnal Ilmiah Syariah* 10, No. 2 (2011).

<sup>38</sup> Siti Nurjannah, Al-mubâdalah Maḥḥūmi and Fiqhi Mar, "المبادلة في مفهوم فقه المرأة المعاصرة" "بإندونيسيا" *Jurnal Al Ihkam* 17, No. 1 (2022), p. 189–215.

<sup>39</sup> Umar et al., "Indahnya Kemitraan Laki-laki dan Perempuan Dalam Hukum Islam," *Journal of Islamic and Law Studies* 3, No. 1 (2019), p. 165

<sup>40</sup> Yusna Zaidah, et.al., "Unveiling the Role of Local Cultural Considerations in Judicial Discretion: An Analysis of Inheritance Decisions in the Religious Courts of South Kalimantan," *al-Risalah: Forum kajian hukum dan Sosial Kemasyarakatan* 23, No. 1 (2023), p. 47–58. Aden Rosadi and Siti Ropiah, "Reconstruction of Different Religion Inheritance through Wajibah Testament," *Jurnal Ilmiah Peuradeun* 8, No. 2 (2020).

<sup>41</sup> Ibrahim Yilmaz, "Islam Hukukunda Kız Çocuğunun Mirastaki Payının Cinsiyet İle Temellendirilmesine Analitik Bir Bakış: An Analytical Overview on the Girls Inheritance Share Based on Gender in Islamic Law," *Cumhuriyet Theology Journal* 22, No. 1 (2018), p. 347–76.

<sup>42</sup> Sahiron Syamsuddin, *Prinsip Dan Dasar Hermeneutika Hukum Islam Kontemporer* (Yogyakarta: El SAQ Press, 2007), p. 147.

so that the concept of 1: 1 is felt to fulfill the idea of fairness. This is supported by Musdah in that the verse reads, “*li az zakari mislu hazihi al unsayain*” The distribution of inheritance is not a permanent law but will continue to move with the times with various cases that occur.<sup>43</sup>

The issue of justice is one of the fundamental issues that is often discussed in inheritance law. The debate about justice in the distribution of inheritance occurs because of its connection with the need to care for the soul (*hifzh al nafs*) and preserve property (*hifzh al mal*)<sup>44</sup>. These two needs demand that inheritance patterns be adapted to social realities, which offer a new paradigm for inheritance law. To be able to reflect gender-equitable inheritance laws, namely, laws that pay attention to the rights of both men and women, by not abandoning the values of Islamic justice, namely justice to achieve happiness in the world and the hereafter.<sup>45</sup> The principle of Islamic law is for the benefit of the people or “*rahmatan lil 'alamin*” Which is a mercy for all nature by prioritizing deliberation to reach a consensus and not allying in matters that are not pleased by Allah.

If fairness is associated with the distribution of inheritance in the Jambi Malay community, then the understanding is also varied. However, what is more dominant in the local community is that it is fair if the distribution of inheritance is given equally between sons and daughters without differentiating the sex of the child by prioritizing deliberations to reach a consensus and considering the balance between rights and obligations and balance between what is obtained with the needs and uses.<sup>46</sup> Based on this understanding, it provides space in the distribution of inheritance by the conditions and mutual agreement between the heirs.

### **Harmonization and Elasticity of Islamic and Customary Laws**

The issue of religion and culture is one of the crucial issues that generates many judgments in society. Some groups in society think that religion must be sterile from culture, while on the other hand, religion can have a dialogue with culture as long as it pays attention to and maintains matters relating to the purity of faith. The phenomenon illustrates the existence of a feud between religion and culture, which in the end creates a polemic, whether the culture that has lived and developed in society must submit to religion or vice versa. Religion must adapt to the culture that

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<sup>43</sup> Musdah Mulia, “Perempuan Untuk Pencerahaan Dan Kesetaraan Dalam Perkawinan Dan Keluarga” *Yayasan Jurnal Perempuan*, (2012), p. 133.

<sup>44</sup> Abu Ishaq al-Syatibi, *Al Muwafaqat Fi Ushul Asy-Syari'ah* (Dar al Fikr al Arabi, n.d.), p. 16.

<sup>45</sup> Ridwan, “Gender Equality in Islamic Inheritance Law: Rereading Muhammad Shahrur’s Thought,” *Al-Manahij: Jurnal Kajian Hukum Islam* 16, No. 2, 181–192.

<sup>46</sup> Interview with Azrai al Basyari, Chairman of the Jambi City Traditional Institution, October 1, 2023.



grows and lives in the community. Religion and culture influence each other because they contain values and symbols.<sup>47</sup>

Islamic law is present and, coupled with culture, creates a process of attraction, integration, assimilation, and acculturation.<sup>48</sup> The emergence of Islam resulted in a transfer of form or social transformation and reform of society towards a better direction.<sup>49</sup> Because Islam is a symbol of obedience to God, while culture symbolizes building civilization and social life.<sup>50</sup>

According to Ratna Lukito, there are two groups in the debate between Islamic and customary law. The first group consistently portrays the relationship between adat and Islamic law as a picture of endless war because it is common for conflicts to occur between the two<sup>51</sup>, In contrast, the second group describes the relationship between Islamic law and adat as harmonious.<sup>52</sup> These two conflicting theories were used as political and scientific reasons to play one against the other, leading to divisions among the natives between the religious and indigenous peoples.<sup>53</sup> There was a war<sup>54</sup> Before Indonesia was finally united with the spirit of nationalism and won independence against Dutch and Japanese colonialism.<sup>55</sup>

Indonesian people accept Islam peacefully, so the legal system colors the existing legal system. In some areas, such as Jambi and Aceh, the influence of Islamic law is so strong that Islamic law replaces the position of customary law that was previously in effect. As a universal legal system, Islamic law accommodates the legal system that applies in a society. In this case, Islamic law provides space for

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<sup>47</sup> Reginaldo Prandi, "Religions and Cultures: Religious Dynamics in Latin America," *Social Compass* 55, no. 3 (2008), p. 264–74.

<sup>48</sup> Muhammad Mahsus, "Contextual Interpretation and the Existence of Women and Their Implications for Equalization of the Inheritance of Men and Women," *Journal of Islamic Law* 1, No. 1 (2020), p. 25-44.

<sup>49</sup> Madjid, *Islam Doktrin Dan Peradaban : Sebuah Telaah Kritis Tentang Keimanan, Kemanusiaan Dan Kemodernan*, (Jakarta : Gramedia Pustaka Utama, 2019): 551.

<sup>50</sup> John Storey, *Pengantar Komprehensif Teori Dan Metode Cultural Studies Dan Kajian Budaya Pop* (Yogyakarta: Jalasutra, 2006), p. 2-3. Peter L Berger, *Langit Suci Agama Sebagai Realitas Sosial* (Jakarta: LP3ES, 1994), p. 8.

<sup>51</sup> Paula M Cooley, "The Tension between Religion and Culture," *Buddhist-Christian Studies* 11, No. 1 (1991), p. 248–254.

<sup>52</sup> Ratno Lukito, *Islamic Law and Adat Encounter : The Experience of Indonesia*, Thesis Institute of Islamic Studies McGill University Montreal Canada 1997, p. 1.

<sup>53</sup> Pederspiel and Howard, "Islamic Values, Law and Expectations in Contemporary Indonesia." *Islamic Law and Society* 5, No.1 (1998), p. 90-117.

<sup>54</sup> Zaim Rais, *The Minangkabau Traditionalists Response to The Modernist Movement*, *National Library of Canada*, Disertasi (Montreal: McGill University, 1994).

<sup>55</sup> Hans Christian Korsholm Nielsen, "State and Customary Law in Upper Egypt," *Islamic Law and Society* 13, No. 1 (2006), p. 123–151. R. Michael Feener, "Social Engineering through Shari'a: Islamic Law and State-Directed Da'wa in Contemporary Aceh," *Islamic Law and Society* 19, No. 3 (2012), p. 275–311. John L. Comaroff, "Reflections on the Rise of Legal Theology: Law and Religion in the Twenty-First Century," *Social Analysis* 53, No. 1 (2009), p. 193–216.

customary law to continue to be implemented by the community, of course, on the condition that it does not conflict with Islamic values.<sup>56</sup> Muhammad Taufik reinforced that Islamic law accepts customary law as custom accepts Islamic law to harmonize traditions with Islamic teachings.<sup>57</sup>

In theory, the Islamization of Indonesia and the Malay world accommodates the customs prevailing in society. Like a house, regardless of its shape, Islam still accepts it as long as it does not conflict with the basic principles of Islam, monotheism. Even if it is contradictory, the scholars gradually change it by incorporating elements of Islamic teachings so that the old form is still left. However, the contents have changed so that various verses were born, including, "*adat bersendi syara, syara' bersendi Kitabullah, kuat adat ta'gadoh hukum, kuat hukum ta'gadoh adat, ibu hukum mufakat, ibu adat muafakat*" for the Malay community of peninsular Malaysia,<sup>58</sup> *adat ngon hukom lagee zat ngon sifeuet* (the relationship between tradition and law is like the relationship between substance and nature) For the people of Aceh, "*panggaderreng*", a linking socio-social *adeq* (customs) and *saraq* (*syarak*) for the Bugis community, "custom inherited from the Prophet, caliphate from Adam, custom based on scholars, custom written on paper, custom implied in the Sunnah, custom confined to the Book of God" for the Minang community<sup>59</sup> and Perlis Malays, Malaysia<sup>60</sup> and Jambi.<sup>61</sup>

Several scholars discussed the relationship between Islamic and customary law in Jambi, including Rachman and Rahman's "The Dynamic of Malay Islamic Law : The Rise and Practices of *Adat Bersendi Syara, Syara bersendi kitabullah* in Jambi concluded that the implications of Islamic law and customary law in Jambi society are always integrated with local culture so that the concept of custom and

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<sup>56</sup> Abdurrahman, "Harmonisasi Hukum Adat dan Hukum Islam bagi Pengembangan Hukum Nasional di Indonesia," *Al Masalahah: Jurnal Hukum Dan Pranata Sosial Islam* 3, no. 6 (2015), p. 233–246.

<sup>57</sup> Muhammad Taufiki, "Al Insijam Bayna al 'Urf wa al Shari'ah al Islamiyyah fi Taqlid Ngarunghal bi Majalengka, Indunisiya," *Jurnal Ahkam* 21, No. 1, (2021), p. 189-212.

<sup>58</sup> M. B. Hooker, "Adat and Islam in Malaya," *Bijdragen tot the Taal Land en Volkenkunde*, (1974), p. 69-90.

<sup>59</sup> Sidik Tono, et. al., "The Harmonious Relationship between Minangkabau Custom and Islam in the Distribution of Inheritance," *Al-Shajarah: Journal of the International Institute of Islamic Thought & Civilization* (2019), p. 39–55.

<sup>60</sup> Hooker, "Adat and Islam in Malaya," *Bijdragen tot the Taal Land en Volkenkunde*, (1974), p. 69-90.

<sup>61</sup> Subhan M.A. Rachman and Fuad Rahman, "The Dynamic of Malay Islamic Law: The Rise and Practices of Adat Bersendi Syarak, Syarak Bersendi Kitabullah in Jambi," *Journal of Indonesian Islam* 11, No. 2 (2017), p. 389–404. Zulfan Taufik and Muhammad Taufik, "Nagari Madani: Islamic Favoritism and Religious Freedom in Regional Development in West Sumatera, Indonesia," *Ulumuna: Journal of Islamic Studies* 27, No. 2 (2023).

*syara* in Jambi is not just a habit, but as a culture that is enriched with ethical legitimacy contained in Islamic law.<sup>62</sup>

According to Samsuddin Ali, since Islam came to the Jambi area, the Malay people of Jambi have agreed to make Islam a guide for life, following the customary philosophy of *syara'*, accompanied by Kitabullah, *syara mengato*, and everyday wear.<sup>63</sup> Even though Islamic law has yet to be fully implemented, especially in matters of inheritance. However, as admitted by Fathuddin Abdi, the Jambi Malay community is aware that *syara'* is part of the Islamic religion, while adat is a tradition inherited from their ancestors that must be maintained. After the two are integrated and complement each other, they must be obeyed as a form of upholding the ideals of their religion and existence to harmonize Islam and custom.<sup>64</sup>

### **Polarization of Inheritance Distribution in the Jambi Malay Community**

Initially, the inheritance laws applied in Indonesia varied according to the kinship style of each custom, such as patrilineal, matrilineal, and parental/bilateral kinship. However, due to intensive contact between the customary law systems, inculturation, and acculturation, inheritance distribution tends to be towards balance (bilateral). In this case, the concept of equality between men and women is considered a characteristic/characteristic of national law.<sup>65</sup>

In Jambi society, the family system adopted is parental, where both sons and daughters have the right to inherit property. The author's interviews with various Merangin community leaders, including Buya Satar as a religious figure, stated that women receive an inheritance from their parents after carrying out family discussions that present *tuo tengganai*, *ninik mamak*, and even religious scholars. The estate division is equal to that of men or exaggerates the share of women with consideration of the benefit for the heirs and to maintain the integrity of the family in the future. However, this is carried out after some time because the division of inheritance is carried out according to Islamic inheritance law (*Faraid*).<sup>66</sup>

Fachruddin, chairman of the Merangin Regency MUI, said that in inheritance, women have a controlling position in rights (*ekupakai*). This means that when a woman gets more estate, it does not mean that the property is hers. From this wealth, there are opportunities for women to help their brothers when they have economic difficulties. Besides that, some divide it in an afraid manner with the

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<sup>62</sup> Subhan M.A. Rachman and Fuad Rahman, "The Dynamic of Malay Islamic Law.

<sup>63</sup> Interview with Samsudin Ali, religious leaders, Jambi Province, September, 2022.

<sup>64</sup> Interview with Fathuddin Abdi, Chairman of the Jambi Province Traditional Institution, September 1, 2023.

<sup>65</sup> Ratno Lukito, "The Enigma of National Law in Indonesia: The Supreme Court's Decisions on Gender-Neutral Inheritance," *Journal of Legal Pluralism and Unofficial Law* 38, No. 52 (2006), p. 147–67.

<sup>66</sup> Interview with Buya Satar, religious figure, Jambi Province, September 1, 2023.

consideration that one must accept the existing provisions. This is a manifestation of the implementation of *syara'* law holistically, as it is said that adat is based on syara, and syara is based on the book of Allah.<sup>67</sup> Women receive the entire inheritance of their deceased parents' assets for family needs. Even under certain conditions, women can get property from their mother's brother (uncle), who died.<sup>68</sup> The practice of dividing inheritance is natural because the sociological conditions of the Jambi Malay community are far different from those of the Arabs, where a woman tends to only work at home as a housewife. At the same time, subsistence is the complete responsibility of her husband.

Based on the practice in the Jambi Malay community, there was a dualism of inheritance, namely Islamic and customary law. In Islamic inheritance law, the position of women and men as heirs are different regarding the portion of the estate received, whereas, in customary law, there is no difference between the position of women and men as heirs. To bridge the dualism of inheritance division, it is necessary to carry out a dialectic between religious leaders and traditional leaders in Jambi Province. This combination of Islamic law and custom will respond to the local community's inheritance system.<sup>69</sup>

The dialectic of Islamic and customary law in the practice of inheritance distribution in the Jambi Malay community gave rise to negotiation and compromise to bridge the two directions. All day-to-day decisions are affirmed through sharia decisions so that both mutually reinforce and are readily accepted. On this basis, the Jambi Malay community is known as a society that is wise in dealing with social problems and conflicts.<sup>70</sup>, particularly in terms of inheritance. For example, boys and girls have the same position in both legal systems, namely as the principal heirs of their parents. Because both are based on kinship or family relations of the heir.<sup>71</sup>

This study found that the pattern of inheritance distribution in the Jambi Malay community only partially used Islamic inheritance based on custom because Jambi society is still polarized and adheres to traditional businesses. This departs from an understanding of whether or not it is reasonable for someone to get a certain amount of inheritance rights. For example, 1) female heirs get more assets than male heirs, and 2) parental housing is an inheritance right for daughters that should be implemented and cannot be negotiated.

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<sup>67</sup> Interview with Fachruddin, chairman of the Merangin Regency MUI, September 1, 2022

<sup>68</sup> Interview with Rahma, Jambi City Community, July, 2022

<sup>69</sup> Syaikh, et.al., "The Maqashid Sharia Construction on Inheritance in Dayak Ngaju Customs within the Tumbang Anoi Agreement", *el-Mashlahah* 13, No. 2 (2023), p. 181-202.

<sup>70</sup> Subhan M.A. Rachman and Fuad Rahman, "The Dynamic of Malay Islamic Law: The Rise and Practices of Adat Bersendi Syarak, Syarak Bersendi Kitabullah in Jambi," *Journal of Indonesian Islam* 11, No. 2 (2017), p. 389-404.

<sup>71</sup> Interview with Azra' al-Basyari, chairman of the Jambi city traditional institution, October 1, 2023.

The classification of inheritance in the Jambi Malay community is divided into heavy assets, light assets, and seko. Rich assets are reserved for girls, while soft assets are for boys because soft assets do not directly become the foundation of their sister's life. Meanwhile, the seko is jointly owned by the eldest son. The heavy wealth goes down to daughters because, according to Jambi customary law, sons can return with their sisters if they experience poverty. By the traditional *seloko* "*Putus tali balik ke tambang, pecah jung balik ke kualo*", meaning that if the brother is sick or falls into poverty, is divorced from his wife, he can return to his sister to make ends meet.<sup>72</sup>

This pattern is based on a perspective that is based on cultural realities that occur in the Jambi Malay community, such as the habit of girls who are more at home and devoted to their parents than boys. Likewise, in domestic matters (household), girls help more with cooking, cleaning the house, and sometimes washing their brothers' clothes. While boys only recite the Koran outside the area. It is this kind of habit that underlies why female heirs get more than male heirs.<sup>73</sup> Even so, when a woman gets more inheritance, it does not mean that the property is hers.<sup>74</sup> Sisters do not have the right to sell it without permission from the man or brother. They can only take advantage of it, such as rice fields, gardens, etc.<sup>75</sup> From this property, there are opportunities for women to help their brothers when they face economic difficulties through the agreement and approval of the heirs.

If it is connected with the amount received with the obligations and responsibilities, the legal flexibility and the principle of benefits that are felt between men and women will be seen. Even though Islamic inheritance shows that the male share is twice as much as the female share, this is different in practice in the Jambi Malay customary community. This is permissible in Islam because the position of women in the Jambi Malay custom holds more responsibility in guarding the house left by their parents as a place to return to for their brothers if one day they experience economic difficulties.<sup>76</sup>

This pattern is consistent with Reni Nur Aniroh's statement that inheritance distribution must take into account the social conditions of the community, living

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<sup>72</sup> Lembaga Adat Jambi, *Garis-Garis Besar Pedoman Adat Bagi Pemangku Adat Dalam Kotamadya Jambi Dati II Jambi* (Jambi: Lembaga Adat dan Pemda Kota Jambi, 1995), p. 98. Muchtar Agus Cholif, *Implementasi Hukum Adat, Lembaga Adat Melayu Jambi*, paper, presented at a one-day seminar of the Jambi Malay Women's Association, in Jambi City, 2014.

<sup>73</sup> Interview with Abd Rahim, traditional leaders, Jambi Malay, September 1, 2023.

<sup>74</sup> Eko Budiono, et.al., "Analyzing the Legal Framework of Substitute Heirs in Islamic Inheritance Cases: DKI Jakarta High Religious Courts Perspective," *Syari'ah: Jurnal Hukum dan Pemikiran* 23, No. 2 (2023), p. 281-299.

<sup>75</sup> Nur Aida Fitri Habi, *Hukum Waris Islam dan Keadilan Gender dalam Seloko Adat Jambi pada Hukum Pucuk Induk Undang nan Limo*, (Jakarta: Publica Indonesia Utama, 2022): 142

<sup>76</sup> Muchtar Agus Cholif, *Implementasi Hukum Adat, Lembaga Adat Melayu Jambi*, paper, presented at a one-day seminar of the Jambi Malay Women's Association, in Jambi City, 2014.

law, and the specific objective/legal requirements of the heirs, as well as considering the literal text of the verse as the primary reference for Islamic law so that the distribution mechanism does not deviate from the path of justice and equality.<sup>77</sup> And reinforced by Tedi Supriyadi that inheritance law is a social response in which the legal illat is the sociological construction of society.<sup>78</sup>

KHI (183) Regulates "the heirs can agree to make peace in the distribution of inheritance after each is aware of his part. This is to strengthen the argument made by the heirs by dividing the inheritance 1: 1 if they have agreed to distribute the inheritance evenly. This is in line with what was conveyed by Abdul Somad, that equal distribution of estate between men and women is permissible. If three conditions have been met: first, each heir has reached puberty. Second, all heirs know their respective shares by the provisions of Islamic inheritance law. Third, the excess rations are considered donations and are given up so that they are kept from being brought up in the future. In this context, Islamic law must accommodate the ummah's problems without eliminating its basic principles. Several Muslim countries have made reforms to family law, especially related to inheritance issues.

## Conclusion

This study concludes that inheritance law has no difference in principle between men and women. They have the same rights, but the portion is different. Justice in Islamic inheritance law is taught to be balanced, not equal. In Jambi Malay society, there is legal dualism in the practice of inheritance distribution, namely Islamic law and customary law. However, customary law dominates compared to Islamic law because the people of Jambi are still polarized and adhere to traditional customs. This departs from an understanding of whether or not it is reasonable for someone to get a certain amount of inheritance rights. In practice, the flexibility of female inheritance distribution in the Jambi Malay community aims to find out about the Jambi Malay community's negotiations in dealing with the Equalization of men and women in the distribution of inheritance by prioritizing deliberations to reach a consensus and considering the balance between rights and obligations and the balance between what is obtained with the needs and the use. Equalization is permissible in Islam because in practice there must be agreement and approval from each heir.

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<sup>77</sup> Reni Nur Aniroh, "Mempertegas Ide Kesetaraan Gender dalam Sistem Kewarisan Bilateral Pasca Hazairin," *Al Ahwal* 13, No. 2 (2020), p. 119. Asghar Ali Engineer, *Islam and Its Relevance to Our Age* (Yogyakarta: LKIS, 2007), p. 69. Pnina Werbner and Richard Werbner, "A Case of Inheritance: From Citizens' Forum to Magisterial Justice in Botswana's Customary Courts," *Anthropology Southern Africa* 43, No. 1 (2020), p. 15–31.

<sup>78</sup> Tedi Supriyadi, "Reinterpretasi Kewarisan Islam Bagi Perempuan," *Sosioreligi: Jurnal Kajian Pendidikan Umum* 14, No. 2 (2016), p. 65–78.

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### Interviews

- Interview with Buya Satar, religious figure, Jambi Province, September 1, 2023.
- Interview with Fachruddin, chairman of the Merangin Regency MUI, September 1, 2022
- Interview with Rahma, Jambi City Community, July 1, 2023.
- Interview with Fathuddin Abdi, Chairman of the Jambi Province Traditional Institution, September 1, 2023
- Interview with Azra'i al-Basyari, Chairman of the Jambi City Traditional Institution, October 1, 2023.
- Interview with Samsudin Ali, , religious figure, Jambi Province, September 1, 2023
- Interview Abd Rahim, traditional leaders, Jambi Malay, September 1, 2023.