

## CONTROVERSY OVER JAVANESE CUSTOMARY INHERITANCE PRACTICES IN KANIGORO BLITAR SUB-DISTRICT FROM THE PERSPECTIVE OF RELIGIOUS MODERATION

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### ABSTRAK

Praktik waris adat dalam prespektif moderasi beragama merupakan suatu isu yang menarik untuk dibahas, beberapa pihak mempersepsikan bahwa pembagian waris dalam hukum islam dinilai tidak cukup merata dalam pembagiannya. Tujuan dari penelitian ini untuk mengukur seberapa besar pengaruh moderasi beragama dalam perkembangan hukum waris adat jawa, khususnya di kecamatan Kanigoro kabupaten Blitar. Penelitian ini menggunakan metode penelitian hukum empiris, metode yang menggunakan fakta-fakta empiris dari perilaku manusia, dapat berupa perilaku verbal yang dapat dilakukan pengamatan secara langsung, dan dalam konteks ini memilih pendekatan konseptual. Selanjutnya peneliti menggunakan kaidah fiqhiyyah sebagai upaya mengharmonisasikan antara budaya dengan hukum islam. Hasil dari penelitian ini menunjukkan bahwa praktik waris adat jawa di kecamatan kanigoro blitar dipengaruhi oleh beberapa faktor seperti agama, budaya atau adat, serta hukum negara. Dan kontroversi tersebut paling banyak didasari oleh faktor kebutuhan individual di keluarga, sehingga pembagian waris dibagi sama antara perempuan dan laki-laki. Untuk menghindari permusuhan dan membangun kerukunan antar keluarga.

**Kata kunci :** praktik, waris, adat jawa, moderasi beragama .

### ABSTRACT

*The practice of customary inheritance from the perspective of religious moderation is an interesting issue to be discussed. Some parties perceive that the division of inheritance in Islamic law is considered not to be fairly evenly distributed. The aim of this research is to measure how big the influence of religious moderation is on the development of Javanese traditional inheritance law, especially in Kanigoro sub-district, Blitar district. This research uses empirical legal research methods, methods that use empirical facts from human behavior, which can be verbal behavior that can be observed directly, and in this context chooses a conceptual approach. Next, the researcher uses fiqhiyyah rules as an effort to harmonize Islamic legal culture. The results of this research show that Javanese traditional inheritance practices in Kanigoro Blitar sub-district are influenced by several factors such as religion, culture or custom, as well as state law. And this controversy is mostly based on individual needs in the family, so that inheritance is divided equally between women and men. To avoid hostility and build harmony between families.*

**Keywords:** practice, inheritance, Javanese customs, religious moderation

## INTRODUCTION

Inheritance law in Indonesia is still pluralistic because there is no inheritance law that applies uniformly or equally in Indonesia. This is due to differences in ethnic, cultural and religious backgrounds. Inheritance law is a subfield of civil law, especially family law. Inheritance law is closely related to human life, because one of the most important events in human life is death, and death has certain legal consequences.(Nugroho et al., 2021)

The event raises questions regarding everything that is left behind by the person who died. The rules governing the transfer of wealth of a person who dies to his heirs are called inheritance law. This research will discuss more deeply the practice of inheritance according to Javanese customs, in the Kanigoro sub-district of Blitar district. And reviewed from the perspective of religious moderation and fiqhiyyah rules.

The division of inheritance in Javanese society has various characteristics in each region. Although in general there are rules that have become customs that apply for generations, in practice there are several variations in the implementation of inheritance distribution. The rapid development of today's era and the increasingly broad and modern mindset of humans, has resulted in the distribution of inheritance that is irregular and not in accordance with the law of inheritance. Sometimes a person only prioritizes his lust or ego to control the property of the heir (Astutik, 2019).

The practice of inheritance in Javanese customary society, especially in Kanigoro sub-district, Blitar district, adheres to various variations in dividing the inheritance. Some heirs get the same share, some get 2 for men and 1 for women, and there are also heirs who get more shares for certain reasons (Robiyanti, 2023). For this reason, the purpose of this study is to find out how much influence religious moderation has on the controversy over Javanese customary inheritance practices in the Kanigoro district of Blitar.

Table 1. Comparison table of villages that use Javanese customary inheritance law and Islamic law.

No	Village	Distribution
1	Village sawentar	In this village, 98% of the people use customary inheritance law with men and women receiving equal

		shares. Meanwhile, 2% of the population uses Islamic inheritance law with a male to female ratio of 2:1
2	Village tlogo	90% use customary inheritance law, 10% use Islamic inheritance law.
3	Village banggle	95% use customary inheritance law, 5% use Islamic inheritance law.
4	Village gaprang	95% use customary inheritance law, 5% use Islamic inheritance law.

## DISCUSSION

### Definition of customary inheritance law

Wirdjono prodjodikoro, former chairman of the supreme court of the republic of Indonesia said that inheritance law is the laws or regulations governing whether and how the various rights and obligations regarding a person's wealth at the time of his death will pass to other people who are still alive.

Article 830 of the Civil Code states that inheritance law is a law that regulates the legal position of a person's property after he dies, especially the transfer of that property to another person. And according to Wirdjono Prodjudikoro, that the definition of inheritance above according to the Civil Code has elements, namely:

- a. a legatee or (erfleter) who on his death leaves wealth.
- b. a person or several heirs (erfgenaam) who are entitled to receive the wealth left behind, raises the issue of how and to what extent there must be a family relationship between the legatee and the heir so that the wealth of the legatee can be transferred to the heir.
- c. Inheritance property (halatenschap).

Whereas in the compilation of Islamic law (KHI) article 171 letter a states that inheritance law is a law that regulates the transfer of ownership of the heir's estate which determines who is entitled to become heirs and how much their respective parts are.

The term customary inheritance law, which is often called customary inheritance law, means that customary inheritance law does not merely describe inheritance in relation to heirs, but is broader than that.

Ter Haar said that customary inheritance law is the legal rules regarding how from century to century the transmission and transfer of tangible and intangible property from generation to generation (Ridwanl et al., n.d.)

According to hilman hadikusuma, customary inheritance law is customary law that contains lines of provisions regarding the system and principles of inheritance law regarding inheritance, heirs, and heirs, as well as how the inherited property is transferred control and ownership from the heir to the heir.

This statement is different from Soepomo's opinion, which states that customary inheritance law contains regulations governing the process of inheritance and transfer of property and intangible property for generations.

The Law of Inheritance contains provisions governing the procedures for inheritance and the acquisition of property from one heir to another. The procedure for inheritance and transfer of property applies both when the testator is still alive and after the testator dies. The form of transfer is by appointment, transfer of authority or transfer of ownership of an item from the heir to the heir.

According to Hazairin, customary inheritance law has its own style from the mind of a traditional society with a form of kinship whose descent system is patrilineal, matrilineal, parental or bilateral, although the same form of kinship does not necessarily apply to the same inheritance system. Therefore, the nature of customary inheritance law is also influenced by the existing kinship system in a society.

### **Definition of Qawaid Fiqhiyyah**

Al-Qawa'id is the plural of qa'idah (rules). Scholars interpret qa'idah etymologically and terminologically. In the sense of language, qaidah means principle, basis, and foundation, both in a concrete sense and an abstract meaning, such as qawa'id al-bait which means the foundation of the house, qawa'id al-din, meaning the basics of religion, qawa'id al-ilm, meaning the rules of science.

اللَّهُ بُنِيَ لَهُمْ مِنَ الْقَوَائِدِ فَأَتَى

" So Allah destroyed their houses from their foundations." (QS al-Nahl: 26.)

From the above understanding, it can be concluded that the meaning of kaidah is the basis, principle or foundation, on which the building stands. Al-Qawaid al-fiqhiyyah is a series of two words, namely qawa'id and fiqhiyyah. The relationship between these two words in nahwu science is called the relationship between shifat and maushuf, or na'at and man'ut. So, qawa'id fiqhiyyah is the basics or principles related to the problems or types of fiqh (Rohim, 2019).

Al-fiqhiyyah comes from the word fiqh which means al-fahm (understanding), which is coupled with ya'nisbah, so that it functions as a type or standardization. From this explanation it can be concluded that in the science of fiqh the role of reasoning (understanding) which means the role of reason is absolute."

As for qawaid fiqhiyyah, it is a rule that is the conclusion of many fiqh issues that have the same rulings so that a rule appears that represents the equation. As an illustration, a jurist is faced with hundreds of fiqh issues. After he analyzes it, he finds that there are similarities in all these issues, the similarities are then concluded into fiqh rules. For example, after examining many fiqh issues, the conclusion is reached that harm must be eliminated, the rule of harm must be eliminated or on another occasion, the conclusion is reached that something that is already believed to be legal then it cannot be eliminated because of the doubts that come after it, the rule of belief cannot be eliminated by doubt.

Based on this, the rules of ushul fiqh were used earlier than the rules of fiqh. Because ushuliyyah rules are used to determine the meaning of a lafaz which leads to legal conclusions. Then from the laws that have the same meaning or intent, it is concluded to be the rules of fiqh. So in terms of the order of use, the usul fiqh rules are applied first, although in reality the usul fiqh rules and fiqh rules are used together.

### **The Division of Inheritance in Review of Fiqhiyyah Rules (al-adata muhakkamah) and religious moderation**

Al-adata muhakkamah is a fiqh rule that states that customs that have grown and developed strongly in society and do not conflict with Islamic law, can be recognized and enforced as law. This rule can be applied in various aspects of life, including in terms of inheritance distribution.

Etymologically, Al-'adah is the root word of 'ada ya'udu wa huwa al'aud which means habit of something and is continuously done so that it becomes characteristic. The meaning of Urf in terms of Hafid An-Nasafi defines 'adah wa 'urf is something that can be accepted by common sense and human nature.

In this context, the rule of al-adata muhakkamah can be applied to various issues regarding the distribution of inheritance. First, the adjustment of women's inheritance rights. In some customs, women's inheritance rights are modified to adjust to the socio-cultural conditions of the

community. Second, the recognition of the inheritance rights of adopted children. Depending on the custom, adopted children can be recognized as heirs and have rights such as inheritance.

The application of these *fiqhiyyah* rules in the division of inheritance must be done carefully and carefully. This is important to ensure that there is no violation of Islamic law and to preserve the rights of all parties involved.

An example of an inheritance division case illustrates the application of this rule. In Sawentar Village, Kanigoro Subdistrict, the inheritance is divided equally between men and women. This is despite the fact that the Quran explains that sons get twice as much as daughters.

The application of these customary rules is acceptable in the context of *al-Adat Muhakkamah*, because it does not conflict with Islamic law. This is because this custom was established with the aim of maintaining a balance in the distribution of inheritance and preventing family disunity.

Therefore, the *fiqhiyyah* rule of *al-adatu muhakkamah* is a *fiqh* rule that can be applied in the distribution of inherited property by adjusting to the socio-cultural conditions of the local community, especially the Kanigoro area of Blitar Regency.

Religious moderation in inheritance means understanding the rules of Islamic inheritance and applying them in a balanced and fair manner. This is done by considering the social and cultural background prevailing in the community and considering the interests of all parties.

Religious moderation is an important concept in Indonesia that is strengthened by the diversity of cultures, religions, languages and traditions. Its main goal is to prevent conflict and racial discrimination. Tolerance itself is one of the important aspects of religious moderation, which means respecting differences and not imposing the truth as a uniform quality. Respecting diversity is also a cornerstone in building national unity, which provides important lessons in tolerating differences through upholding religious principles in building an inclusive and harmonious society.

The application of the value of tolerance in customary inheritance practices is an aspect that has been debated in the community. Although the Qur'an explains that men get twice the share of women, this is limited to the share of *ashabah* and does not apply universally in the context of inheritance.

In the context of customary inheritance distribution, the application of customary inheritance in accordance with the principle of benefit is also worth considering. The principles in

the application of benefit in Islam include avoiding what is contrary to the Qur'an and Hadith, identifying maslahat with competent parties, and knowing that if maslahat is not implemented, then the possibility of mafsadat will arise.

The author is of the view that the application of customary inheritance does not contradict religious principles, the Qur'an and Hadith, so it can be applied. However, scholars are of the opinion that the determination of inheritance must be done in accordance with the Shari'a, but after the division is made, it can then be divided according to the willingness of the individual. This is consistent with customary inheritance, which is expected to maintain justice in the division of property, so that the family wills their property to be divided fairly.

By applying customary inheritance, they try to avoid unwanted conflicts. Therefore, the application of customary inheritance is a step that can maintain harmonious relationships in the family. Understanding that a larger portion for sons can lead to conflict, the application of customary inheritance is seen as an effort to avoid disputes. A comprehensive understanding and dialogue between the families involved is needed to reach an agreement that considers justice and the best interests in the distribution of inheritance.

### **Settlement of controversy over Javanese customary inheritance practices in kanigoro sub-district, blitar district**

Javanese customary inheritance practices still apply and exist in the community of Kanigoro Subdistrict until now. Based on the data obtained, some people still use Javanese customs in the division of inheritance. Javanese customary inheritance practices in Kanigoro District are part of the traditions and culture of the local community. Javanese customary inheritance covers many aspects of life, including the family system, marriage customs, and customary law. The application of Javanese customary law helps resolve conflicts and problems that arise in community life. This customary law is based on family values, honesty and justice. In the practice of inheritance in Java, customary law is used to determine how an estate is divided and who is entitled to receive it.

Then the Qur'an has explained that Islamic inheritance law and its provisions for each heir with a complete and perfect explanation without leaving someone's share or limiting the objects to be inherited. Islamic law has been loaded and incorporated into some of the main laws that apply to people who are Muslim in the territory of the Republic of Indonesia such as Marriage, Grants,

Waqf and so on. Indeed, not all habits carried out by the community are in accordance with the rules or principles that exist in Islamic law.

From the results of research conducted by researchers, it has become evident that there are community customs that are contrary to Islamic law, especially in the distribution of inheritance property.

In the distribution of inheritance in the Qur'an, especially those contained in Q.S Al-Nisa 4/11, which reads:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلَا يُورِثُهُ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ ۚ فَإِن لَّمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ ۚ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ۚ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا ۚ فَرِيضَةٌ مِّنَ اللَّهِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ﴿١١﴾

Meaning: "Allah has prescribed for you the division of inheritance for your children: a son's share is equal to the share of two daughters. If the children are all daughters and there are more than two of them, their share is two-thirds of the property left behind. If she (the daughter) is only one, she gets half (of the property left). For both parents, a share of one-sixth each of the property left behind, if he (the deceased) has children. If he (the deceased) has no children and he is inherited by his parents (only), his mother gets a third. If he (the deceased) has several brothers, his mother gets a sixth. (The inheritance is divided) after (fulfilling) the will he made or (and paying off) his debts. (As for your parents and your children, you do not know which of them will benefit you more; this is the decree of Allah. Verily, Allah is the All-Knowing, the All-Wise."

The above verse explains that a man's share is twice as large as a woman's share because men's duties are heavier than women's, such as the obligation to pay dowry and child maintenance.

The distribution of inheritance property in Islam already regulates the provisions of the share of each heir. When observing the division of customary inheritance with the size of Islamic inheritance, there is definitely a significant difference, because in Islamic inheritance there are already clear provisions about the parts of each heir, while in Kanigoro Subdistrict, although the majority of Kanigoro Subdistrict people are Muslims, the division of inheritance in custom is still inherent until now. The division of inheritance uses the prevailing customary law, namely using the customary culture of compliance.

In practice, the majority of people in Kanigoro Subdistrict still use customary inheritance law and prevailing customs. This can be proven by the existence of approximately 80% of people



who divide the inheritance using customary inheritance law, and the rest use Islamic inheritance law in the division of inheritance.

In the custom that applies in the community of Kanigoro Subdistrict, this is done when the testator is still alive, but in this case it only requires the distribution, then it will become property when the testator has died. The number of shares to each heir is equal except that usually parents will give some of their property to their children who are already married on the grounds that their needs are increasing and are also used as provisions for their children in the future.

## **CONCLUSION**

From the explanation above, it can be concluded that the practice of Javanese customary inheritance in the Kanigoro Blitar area is influenced by several factors such as religion, culture, customs, and state law.

The *fihiyyah* rule of *al-adatu muhakkamah* is a rule that can be applied in the distribution of inheritance to adjust to the socio-cultural conditions of the community, especially the Kanigoro area of Blitar Regency. Religious moderation is an essential concept in Indonesia, reinforced by its diverse cultures, religions, languages and traditions. Its main purpose is to prevent conflict and racism. Therefore, a comprehensive understanding and dialogue between the families involved is needed to reach an agreement that considers justice and the best interests in the division of inheritance.

And the controversy over customary inheritance practices is mostly based on the factor of individual needs in the family, so that the division of inheritance is divided equally between women and men. To avoid hostility and build harmony between families. In practice, the distribution of inheritance property that applies in Kanigoro Subdistrict, the majority still uses customary inheritance law and prevailing customs.

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