NEGOTIATING FARAID, HIBAH, AND CUSTOM: LIFETIME PROPERTY TRANSFERS AMONG JAVANESE MUSLIMS IN KARANG TENGAH VILLAGE

Hasman Zhafiri Muhammad[1], Mohammad Syifa Amin Widigdo[2]
[1,2] Universitas Muhammadiyah Yogyakarta, Indonesia
Email: hasman.zhafiri.psc23@mail.umy.ac.id

Abstract
The coexistence of Islamic inheritance law and Javanese customary practices raises questions about how Muslim communities negotiate religious norms and local conceptions of justice in property distribution. This study examines lifetime property transfers among Javanese Muslims in Karang Tengah Village, Bantul, focusing on the interplay between faraid, hibah, and customary law. Employing qualitative field research with a juridical-empirical approach informed by Islamic legal sociology, data were collected through observation, semi-structured interviews with five purposively selected informants, and documentation, and analyzed using the Miles and Huberman model. The findings reveal that property distribution is determined through family deliberation (*dicungke*) and formalized through customary land measurement and witnessing procedures (*ugeran*). Informants describe a shift from the 2:1 distribution pattern (*sepikul segendongan*) toward equal allocation (*dum dil*), influenced by changing economic roles, perceptions of fairness, and efforts to prevent family disputes. Additional property (*harta gantungan*) is reserved for children responsible for parental care. These practices demonstrate how religious norms, customary values, and family responsibilities are negotiated within local property distribution arrangements. From an Islamic legal perspective, property transferred during the parents' lifetime is classified as hibah rather than inheritance (tirkah). The study concludes that these practices reflect living law, illustrating how customary mechanisms accommodate substantive justice and family harmony while operating alongside Islamic inheritance norms.
Keywords: Islamic Inheritance Law, Hibah, Javanese Customary Law, Living Law, Islamic Legal Sociology.

Abstrak
Koeksistensi hukum kewarisan Islam dan praktik adat Jawa menimbulkan persoalan mengenai bagaimana masyarakat Muslim menegosiasikan norma agama dan konsep keadilan lokal dalam pembagian harta. Penelitian ini bertujuan menganalisis praktik pembagian harta semasa hidup pada masyarakat Muslim Jawa di Desa Karang Tengah, Bantul, dengan menitikberatkan pada hubungan antara hukum faraid, hibah, dan hukum adat. Penelitian ini merupakan penelitian lapangan kualitatif dengan pendekatan yuridis-empiris dalam perspektif sosiologi hukum Islam. Data dikumpulkan melalui observasi, wawancara semi-terstruktur terhadap lima informan yang dipilih secara purposif, dan dokumentasi, kemudian dianalisis menggunakan model Miles dan Huberman. Hasil penelitian menunjukkan bahwa pembagian harta ditentukan melalui musyawarah keluarga (dicungke) dan dilegitimasi melalui mekanisme pengukuran tanah serta kesaksian masyarakat (ugeran). Berdasarkan keterangan informan, terjadi pergeseran pola pembagian dari rasio 2:1 (sepikul segendongan) menuju pembagian sama rata

(dum dil), yang dipengaruhi perubahan peran ekonomi, persepsi keadilan, dan upaya mencegah konflik keluarga. Selain itu, terdapat harta gantungan yang diperuntukkan bagi anak yang merawat orang tua. Praktik tersebut menunjukkan adanya negosiasi antara norma agama, nilai adat, dan tanggung jawab keluarga dalam mekanisme pembagian harta. Dalam perspektif hukum Islam, peralihan harta semasa hidup dikualifikasikan sebagai hibah, bukan pembagian harta warisan (tirkah). Penelitian ini menyimpulkan bahwa praktik tersebut mencerminkan living law yang mengakomodasi keadilan substantif dan keharmonisan keluarga serta berjalan berdampingan dengan norma kewarisan Islam.
Kata Kunci: *Hukum kewarisan Islam, Hibah, Hukum Adat Jawa, Living Law, Sosiologi Hukum Islam.*

A. INTRODUCTION

Tirkah, referred to in classical fiqh as the estate of the deceased, is an inseparable part of the Islamic law of succession. Islamic inheritance is essentially the transfer of property and property-related rights from a deceased person to the heirs who are legally entitled to receive them. Because every human being will eventually die, Islamic law situates the rules of inheritance among its most detailed regulations, aiming to deliver justice while rejecting harm (mafsadah) within the family left behind. As a legal fact, this doctrinal picture of Islamic inheritance supplies the normative benchmark against which any local social practice must eventually be read.

The difficulty is that inheritance law in Indonesia is inherently plural. At least three systems coexist: civil inheritance law (the Burgerlijk Wetboek), Islamic inheritance law as codified in the Compilation of Islamic Law (Kompilasi Hukum Islam, KHI), and customary (adat) inheritance law, which is shaped by local culture. The KHI itself regulates inheritance in considerable detail in its second book, from Article 171 to Article 214, including a distinction between the deceased's estate in general and the portion that specifically constitutes the inheritance. This plurality offers flexibility on the one hand, but on the other hand it produces a dynamic tension between normative ideals and social reality on the ground, particularly among communities that still hold firmly to customary law. It is precisely at this intersection of legal fact, the plurality of codified inheritance

regimes, and social fact, how communities actually distribute their estates, that the present study locates its problem.

This tension is clearly visible among the Javanese Muslim community of Karang Tengah Village, Imogiri Subdistrict, Bantul Regency. Sociohistorically, this area is known as a strong religious stronghold, home to several influential pesantren (Islamic boarding schools), including Pondok Pesantren Ar Romly Giriloyo and Pondok Pesantren Ar Rohmah. Ideally, such a strong religious infrastructure would encourage the community to resolve inheritance matters according to the science of faraid (Islamic inheritance calculation). Yet preliminary findings reveal a different pattern: the distribution of the estate is more commonly settled through a deliberated grant (hibah) made before the testator's death. Across the cases documented in this study, informants consistently described equal shares between sons and daughters as the prevailing pattern, with a few families giving daughters a larger share than sons. This empirical picture, drawn from preliminary observation, is the social fact that stands in direct tension with the legal fact of religious infrastructure just described, and it is this tension that the remainder of this introduction unpacks.

This phenomenon raises an academic problem worth investigating further. Why does a community that is, by all accounts, religiously devout and surrounded by ulama nonetheless adopt an inheritance pattern that textually diverges from the 2:1 ratio stipulated in Surah An Nisa, verses 11 to 12? Is this practice a deviation from the sharia, or is it instead a form of social ijtihad born from a dialectic between the sacred text and local socio-cultural realities? Framed this way, the question risks a false binary, since the evidence below shows the community moving between several legal registers, hibah, customary deliberation, and, in some circumstances, faraid and the Religious Court, rather than rejecting faraid outright. The more precise question this study pursues is therefore how Karang Tengah negotiates among faraid, hibah, and customary norms in practice, rather than whether the community's inheritance pattern is simply deviation or simply social ijtihad. This question forms the starting point

of the present study, which employs Islamic legal sociology as an analytical lens to read the reciprocal relationship between law and society.

Research on hibah and customary inheritance is not new. Nurkholis and Al Amin[1] examined Article 211 of the KHI, which legalizes hibah as a substitute for inheritance, through a legal hermeneutic approach, while Asrizal traced the historical roots of Islamic inheritance law in the pre-Islamic and early Islamic periods.[2] Barus et al. documented the patrilineal inheritance system of the Karo community, which in fact excludes women from inheritance rights altogether, in contrast to the egalitarian bilateral pattern found elsewhere.[3] Fikri and Wahidin described a variation between 1:1 and 2:1 ratios among the Bugis community[4], while Wulani and Hamdani found a similar practice of transferring property during the testator's lifetime among the Mandar customary community.[5] Studies by Wintari and Suparta on the Balinese customary community[6] and by Bachtiar on gender justice in Islamic inheritance further enrich this discourse.[7]

Read together, this body of work clusters into three strands: studies of the normative 2:1 distribution itself, studies treating hibah as an anticipatory alternative to inheritance, and studies documenting customary or local inheritance practice among Muslim communities. Collectively they establish that

[1] M. Nur Kholis Al Amin, "Hibah Orang Tua Kepada Anak Sebagai Pengganti Waris (Telaah Hermeneutika Terhadap Pasal 211 Kompilasi Hukum Islam)," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 6, no. 1 (2013): 29–44, https://doi.org/10.14421/ahwal.2013.06103.

[2] Asrizal Saiin, "Menelaah Hukum Waris Pra Islam Dan Awal Islam Serta Peletakan Dasar Dasar Hukum Kewarisan Islam," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 9, no. 1 (March 1, 2017): 125–38, https://doi.org/10.14421/ahwal.2016.09108.

[3] Jhon Brema Barus, Sukadi, and I Nyoman Natajaya, "Pembagian Harta Warisan Bagi Anak Laki-Laki Dan Perempuan Berdasarkan Hukum Adat Budaya Karo Di Desa Manuk Mulia Kecamatan Tiga Panah Kabupaten Karo," *Jurnal Media Komunikasi Pendidikan Pancasila Dan Kewarganegaraan* 4, no. 1 (2022): 71–79.

[4] Fikri and Wahidin, "Konsepsi Hukum Waris Islam Dan Hukum Waris Adat (Analisis Kontekstualisasi Dalam Masyarakat Bugis)," *Al-Ahkam Jurnal Ilmu Syari'ah Dan Hukum* 2, no. 2 (January 8, 2017), https://doi.org/10.22515/alahkam.v2i2.500.

[5] Fahmi Fatwa Rosyadi Satria Hamdani Tria Septi Wulani, "Tinjauan Hukum Islam Terhadap Pembagian Harta Warisan," *At-Turost : Journal of Islamic Studies* 2, no. 1 (2022): 1–7, https://doi.org/10.52491/at.v7i2.12.

[6] Made Erna Wintari and Gede Agus Suparta, "Sistem Kewarisan: Hak Wanita Dalam Hukum Adat Bali," *Pariksa: Jurnal Hukum Agama Hindu* 6, no. 1 (June 22, 2022): 67, https://doi.org/10.55115/pariksa.v6i1.2241.

[7] Maryati Bachtiar, "Hukum Waris Islam Dipandang Dari Perspektif Hukum Berkeadilan Gender," *Jurnal Ilmu Hukum* 3, no. 2 (April 29, 2013), https://doi.org/10.30652/jih.v2i02.1142.

hibah and customary adjustment are well documented elsewhere in Indonesia, but none asks how a single community consciously moves between all three registers, faraid, hibah, and custom, at once. Nevertheless, no study has specifically examined the practice of deliberated hibah as a pre emptive strategy prior to the testator's death among the Javanese Muslim community of Karang Tengah, using Islamic legal sociology as the analytical framework. This is the gap that the present study seeks to fill. Addressing this gap requires more than description: it requires a theoretical lens capable of explaining why a devout community would knowingly depart from a seemingly unambiguous textual ratio, which is precisely where Islamic legal sociology becomes indispensable to the design of this study.

This study situates itself within Islamic legal sociology, which treats law neither as a self-contained system of texts nor as a mere reflection of social custom, but as the product of a continuous, two-way negotiation between normative doctrine and lived social practice. The study draws on three bodies of work. First, Ehrlich's notion of "living law", the law that actually governs social life rather than the law stated in legal propositions, grounds the claim that village practice can be a normative order in its own right.[8] Second, Pound's two formulations supply the analytical registers used throughout the findings: law as social control, which maintains order by channeling potential conflict into predictable, sanctioned procedures, and law as social engineering, which balances competing interests as social conditions change.[9] Third, the Islamic juristic concepts of 'urf and maslahah, together with the discourse on an Indonesian fiqh Hasbi Ash-Shiddieqy[10] and Hazairin's[11] bilateral reading of Qur'anic inheritance, provide the criteria for judging when a departure from a

[8] Isaac Ehrlich, "Capital Punishment and Deterrence: Some Further Thoughts and Additional Evidence," *Journal of Political Economy* 85, no. 4 (August 1977): 741–88, https://doi.org/10.1086/260598.

[9] R. Pound, "Social Control Through Law," *The University of Toronto Law Journal* 5, no. 1 (1943): 215, https://doi.org/10.2307/824534.

[10] Hasbi Ash Shiddieqy, *Pengantar Ilmu Fiqh* (Jakarta: Bulan Bintang, 1967).

[11] Hazairin, *Hukum Kewarisan Bilateral Menurut Al-Qur'an Dan Al-Hadits* (Jakarta: Tintamas, 1990).

qath'i text is best read as ijtihad rather than as mere deviation. These frameworks are introduced here, rather than after the empirical description, to make explicit how each stage of the findings is read through, and in places pushes against, this analytical framework.

To capture this negotiation empirically, the study adopts a descriptive qualitative design combined with a juridical-empirical approach and a constructivist paradigm, on the premise that the meaning heirs and customary leaders attach to inheritance distribution cannot be read off statutory text alone but must be reconstructed from how they narrate and enact it. Data were gathered through direct observation of the customary institutions described below, semi-structured interviews with purposively selected customary, religious, and community leaders, and documentation of village records, then analyzed using the interactive model of data reduction, data display, and conclusion drawing. The core interview group comprised five informants: [initials/pseudonyms and roles, e.g., a customary elder, village officials, and the incumbent village head]. Their accounts were cross-checked against the 2023 village monograph and, where available, jogoboyo record books, as a basic form of triangulation. Because many substantive claims rest on this group, the findings are not generalizable beyond Karang Tengah. The design suits the research problem because the gap between faraid and local practice is a gap in meaning rather than information, and only a method that stays close to informants' own categories, such as dicungke, ugeran, and dum dil, can show how that gap is bridged in practice.

Building on this theoretical and methodological foundation, this study aims to describe how the practice of customary inheritance distribution unfolds in Karang Tengah Village, Imogiri, Bantul, and to analyze that practice from the perspective of Islamic legal sociology. Theoretically, this study is expected to enrich the discourse on Indonesian fiqh (fikih Keindonesiaan) and the discussion of living law within Islamic family law. Practically, its findings may serve as a reference for village government, religious leaders, and scholars in formulating

legal guidance on inheritance that accommodates local wisdom without setting aside the values of sharia.

B. RESULTS AND DISCUSSION

1. Inheritance Practices in the Karang Tengah Community

a. The Socio-Legal Context of Karang Tengah Village

Karang Tengah Village grew out of a small hamlet situated amid forest land that had existed since before 1923 and fell under the administrative jurisdiction of the Surakarta wedana. Its leadership history records a succession of village heads, beginning with Mangun Dikromo in 1924 to 1925 and continuing to the present head, Haryanto, which reflects an administrative continuity of almost a century. The village lies to the south of Imogiri Subdistrict and covers approximately 287.77 hectares, of which some 82.79 hectares are technically or rain-fed irrigated rice fields, so that agriculture remains the backbone of the local economy.[12]

The village is also widely regarded as a religious stronghold. It is home to two influential pesantren, Pondok Pesantren Ar Romly Giriloyo and Pondok Pesantren Ar Rohmah, which would ideally provide a strong foundation for the community's understanding of fiqh, including the fiqh of inheritance (mawaris).[13] The great majority of residents are Muslim, alongside a small Christian and Catholic minority, and the different faith communities coexist harmoniously and cooperate in daily village life. Communal religious activity is dense and routine, ranging from Qur'anic instruction in neighborhood musholla and congregational prayer to commemorations of the Prophet's birthday and Isra Mi'raj.

According to the 2023 village monograph, Karang Tengah has 5,315 residents, comprising 2,650 men and 2,665 women in 1,786 households across six hamlets. Educational attainment spans all levels, from 1,378 residents with

[12] Awa et al., "Agropreneurship Empowerment: The Application of Digitalization in Local MSMEs 'Tujuh Bersaudara', Karang Tengah Village," *Jurnal Pengabdian Masyarakat* 6, no. 2 (November 16, 2025): 758–65, https://doi.org/10.32815/jpm.v6i2.2815.

[13] Sabari, A. Raharjo, A. Pamuji, Pargiyanto, and Haryanta. 2023. Interview by author. Karang Tengah Village, Imogiri, Bantul, September 8.

only primary schooling to 659 senior secondary graduates, 150 diploma or undergraduate holders, six holders of a master's degree, and one doctoral graduate. The local economy has diversified beyond subsistence farming, with roughly forty small and medium enterprises engaged in food processing, building materials, handicrafts, and related sectors, together with a village-level savings and credit cooperative.[14] In legal terms, families in the village navigate the plural inheritance regimes outlined in the Introduction, in which faraid as codified in the KHI, customary norms, and, where family settlement fails, the Religious Court are all available. Set against the profile of a religiously active, reasonably well-educated, and economically diversified community, the inheritance practices described below are not readily explained by poverty, educational deprivation, or religious indifference.

b. Observed Practices: Dicungke, Dum Dil, Harta Gantungan, and the Position of Widows, Grandchildren, and Adopted Children

Field findings show that parents in Karang Tengah generally divide their property among their children while they are still alive, rather than after death as is customary in classical fiqh. The process begins with a family deliberation. Parents gather all of their children; the children's agreement is sought, but ultimate authority over the division remains firmly in the parents' hands. The allocation of each child's share is called dicungke, that is, the share is designated during the deliberation. For example, the eldest child may be allotted a plot of land together with a rice field, the second child a piece of dry land, and so on, while a pending property (tanah gantungan) is typically reserved for the child who will care for the parents in their old age.[15]

The community itself speaks of this process as waris (inheritance), and the pattern it now most commonly applies is called Dum Dil, an abbreviation of "Di

[14] Ibid.,

[15] Sabari, A. Raharjo, A. Pamuji, Pargiyanto, and Haryanta. 2023. Interview by author. Karang Tengah Village, Imogiri, Bantul, September 8.

Dum Adil" ("divided fairly"), under which male and female children receive equal shares (a 1:1 ratio) without distinction based on sex.[16]

This pattern did not emerge overnight; it is the result of a long sociohistorical shift. The following account of change in women's inheritance reflects the oral historical memory of village leaders in Karang Tengah rather than archival evidence, and it should be read as the community's own recollection of its past. According to a joint interview with five key informants (8 September 2023), before independence women customarily received no inheritance, as they were considered to become their husbands' responsibility upon marriage. After independence, daughters began to receive a token share, generally limited to kitchen utensils, given more as a symbol of parental affection than as a substantive entitlement. In the next stage, the community adopted the pattern of sepikul segendongan, a 2:1 ratio between sons and daughters, which it understood to align with Surah An-Nisa' verses 11-12, because the responsibility of providing for the family rests on men. Around the 1990s, as women became financially independent and parents sought to prevent disputes, the community moved from this 2:1 pattern to a 1:1 distribution (dum dil). These recollections come from a single interview round and could not be verified against archival or village documents, so the periodization is approximate and should not be read as a historical finding about all Javanese Muslim communities.[17] Notably, this equal division is nowhere codified as a formal rule of Javanese adat; rather, it functions as an instance of practical customary wisdom that communities apply flexibly according to what is judged fair in each family's circumstances.[18]

In practice, Dum Dil is not applied rigidly. Where a child cares for aging parents, bears the cost of their medical treatment, or does not pursue higher education, that child may receive a larger share than the siblings, regardless of sex, and a child whom the family judges to be less financially established may

[16] Sabari, A. Raharjo, A. Pamuji, Pargiyanto, and Haryanta. 2023. Interview by author. Karang Tengah Village, Imogiri, Bantul, September 8.

[17] Sabari, A. Raharjo, A. Pamuji, Pargiyanto, and Haryanta. 2023. Interview by author. Karang Tengah Village, Imogiri, Bantul, September 8.

[18] Thaib, *Ilmu Hukum Waris Islam* (Medan: Universitas Sumatera Utara Press, 2012), 89.

likewise receive more.[19] In each case the enlargement is agreed by the other children, so that the adjustment is reached through consensus rather than imposed unilaterally by the parents.

A further distinctive element is harta gantungan, or pending property, an additional portion set aside by the parents for the child who cares for them until the end of their lives and who receives it after they die. The property is not restricted by sex, although in practice it more often falls to the youngest daughter, who is culturally regarded as emotionally and physically closer to the parents.[20] A comparable reserved portion is described by Syibly et al., in the broader Indonesian context of hibah practice, as a "pension" portion (harta pensiunan) that parents withhold from full distribution precisely to secure their own welfare in old age; in Karang Tengah, that reserved portion is earmarked in advance for whichever child undertakes the caregiving role.[21]

The equal-division norm is nonetheless not absolute across the village. A smaller number of better-educated families still choose to distribute the estate according to the faraid ratio, and some disputes that cannot be settled within the family are referred to the Religious Court (Pengadilan Agama), indicating that Dum Dil operates as the community's dominant preference rather than as its only available option.[22] This oscillation between an Islamic law frame and a customary law frame when resolving inheritance questions is a wider feature of Javanese Muslim practice rather than something unique to Karang Tengah.[23] Arrangements also differ according to the children's circumstances. Children who

[19] Sabari, A. Raharjo, A. Pamuji, Pargiyanto, and Haryanta. 2023. Interview by author. Karang Tengah Village, Imogiri, Bantul, September 8.

[20] Sabari, A. Raharjo, A. Pamuji, Pargiyanto, and Haryanta. 2023. Interview by author. Karang Tengah Village, Imogiri, Bantul, September 8.

[21] M. Roem Syibly et al., "The Efforts for Balancing Justice in the Distribution of Inheritance in Patrilineal Muslim Communities," in *Proceedings of the 2nd International Conference on Islam, Science and Technology (ICONIST 2019)* (Paris, France: Atlantis Press, 2020), https://doi.org/10.2991/assehr.k.200220.038.

[22] Ahmad Junaidi, *Wasiat Wajibah, Pergumulan Antara Hukum Adat Dan Hukum Islam Di Indonesia* (STAIN Jember Press, 2013), 162.

[23] Siti Nashihah, "Akulturasi Budaya Islam Pada Ritual Kelahiran Masyarakat Jawa Di Kabupaten Oku Timur," *Tadabbur: Jurnal Peradaban Islam* 8, no. 1 (2026): 54–64, https://doi.org/10.22373/tadabbur.v8i1.294.

have already established their own households typically receive their share outright, whereas the portion of an unmarried child is generally held in trust by the parents until marriage; if a parent dies before that happens, custodianship of the share passes to an elder sibling or another relative by family agreement.[24] Where the parents can no longer conduct the deliberation because of illness, they instead make a will (wasiat), whether written or unwritten, though the principle of equal division is still maintained.

The rules on who may receive a share also diverge, on certain points, from both classical fiqh and the KHI. A widow generally does not receive a direct share of the property; instead, she chooses to live with one of her children, a condition locally referred to as nebeng. A grandchild may receive a share even while the parents' own children are still alive, a situation that classical fiqh would ordinarily bar (hijab) because of the presence of children, and even an adopted child may receive a share, although the KHI formally does not recognize adopted children as heirs.[25] In practice, the choice of recipients rests entirely with the parents, subject only to prevailing customary propriety, and is not extended to neighbors or others with no kinship ties whatsoever.

c. The *Ugeran* Mechanism

The parents' designation of shares is formalized through ugeran, the measurement of the land to be divided. Once the children have agreed, a family representative, usually the eldest child, approaches the hamlet head (dukuh) and the jogoboyo, a customary official responsible for village security and order, including matters such as gambling, alcohol, narcotics, and moral offences, to request that they witness the division. The procedure then has four components. First, the agreed land area is measured. Second, the land's ownership history is recorded in the jogoboyo's record book. Third, neighboring residents (magersari) are involved as witnesses according to the cardinal direction of their homes, and

[24] Junaidi, *Wasiat Wajibah, Pergumulan Antara Hukum Adat Dan Hukum Islam Di Indonesia,* 102.

[25] Stai Nurul and Huda Kapongan, "The Application of Fiqhiyah Principles in the Settlement of Inheritance Disputes in Indonesia from the Perspective of Islamic Law and National Law," *The Indonesian Journal of Islamic Law and Civil Law* 6, no. 2 (2025): 204–19.

they sign a stamped (materai) document, so that they function not merely as onlookers but as co-signatories whose presence forecloses any later contestation of the boundaries. Fourth, the land is re-measured a second time together with the jogoboyo and local officials before boundary markers are installed, a repetition intended to guarantee that ownership is beyond future dispute. Once the process is complete, the village government records the outcome and communicates it to the family.

The procedure therefore leaves three durable outcomes: a stamped document signed by the witnesses, an entry in the jogoboyo's record book, and physical boundary markers on the land. In the community's own account, this layered procedure serves as a preventive instrument against future disputes while simultaneously conferring social legitimacy on the agreed division.

d. The Community's Reasons for Using This Mechanism

Informants offered several interlocking reasons for dividing property in this way. The first is the avoidance of conflict. Parents are reluctant to leave property without a clear owner and prefer to forestall disputes among their children before they can arise, and informants consistently affirmed that the potential for conflict is far lower when property is divided equally than when it is divided according to the 2:1 faraid ratio.[26]

The second reason is the change in women's economic position. The earlier exclusion of daughters, and later the 2:1 pattern, rested on the view that a daughter becomes her husband's responsibility and that the duty of providing for the family lies with men. Once women were considered economically independent and no longer wholly reliant on men, parents came to prefer the 1:1 pattern, primarily because they perceived it to carry a markedly lower risk of conflict than the 2:1 division.[27]

[26] Sabari, A. Raharjo, A. Pamuji, Pargiyanto, and Haryanta. 2023. Interview by author. Karang Tengah Village, Imogiri, Bantul, September 8.

[27] Sabari, A. Raharjo, A. Pamuji, Pargiyanto, and Haryanta. 2023. Interview by author. Karang Tengah Village, Imogiri, Bantul, September 8.

The third reason is the recognition of care for aging parents. Harta gantungan and the enlarged shares described in Subsection 1.b operate as a social incentive that balances the principle of equal distribution with a principle of proportional justice based on each child's actual contribution to the parents' welfare during their lifetime. The community's notion of justice is thus not a formal justice based on a fixed ratio but a substantive justice that takes into account each child's actual contribution and responsibility.

The fourth reason is the priority given to family harmony (kerukunan). Deliberation and consensus are treated as the primary route to avoiding disputes within the family, so that the children's agreement is expected to be sincere and the unity of the family preserved. The ugeran procedure extends the same concern beyond the household by inviting neighbors to witness and co-sign the outcome.[28]

2. Theoretical Analysis from the Perspective of Islamic Legal Sociology

a. Islamic Legal Sociology as an Analytical Framework

Legal sociology, as explained by Hartanto[29] and Cotterrel[30], is a branch of knowledge that examines the reciprocal relationship between law and social phenomena through an analytical empirical approach. Donald Black similarly frames legal sociology as the study of the specific norms a society actually applies and needs in order to maintain order in social.[31] Within this framework, Islamic legal sociology serves to analyze how law operates within society, functioning

[28] Sabari, A. Raharjo, A. Pamuji, Pargiyanto, and Haryanta. 2023. Interview by author. Karang Tengah Village, Imogiri, Bantul, September 8.

[29] Dadang Hartanto, "Sociology Review of Social Phenomenon, Social Rules and Social Technology," *Budapest International Research and Critics Institute (BIRCI-Journal): Humanities and Social Sciences* 3, no. 2 (2020): 1175–84, https://doi.org/10.33258/birci.v3i2.958.

[30] Roger Cotterrell, "Why Must Legal Ideas Be Interpreted Sociologically?," *Journal of Law and Society* 25, no. 2 (June 19, 1998): 171–92, https://doi.org/10.1111/1467-6478.00086.

[31] Aldo Ravellio Muljadi, "Analysis Of the Effect of Legal Sociology with Law Located in Society," *International Journal of Research -GRANTHAALAYAH* 7, no. 11 (June 11, 2020): 138–45, https://doi.org/10.29121/granthaalayah.v7.i11.2020.344.

both as an instrument of social control and as a means of social engineering directed toward achieving a desired social condition.[32]

This functionalist vocabulary is useful, but it should not be applied uncritically. Reading every departure from faraid as either social control or social engineering risks treating Karang Tengah's families as passive carriers of social forces rather than as reflective moral agents who, as the interview material shows, explicitly weigh whether Dum Dil is fair in religious as well as practical terms. The analysis that follows therefore treats social control and social engineering as two lenses the community itself appears to use, rather than as external categories imposed on the data from outside, and asks in each instance whether the functionalist reading is sufficient or whether it obscures a normative argument the community is making in its own right.

b. Social Control: Deliberation, Dum Dil, and Ugeran

Viewed through the lens of social control, the pattern of Dum Dil, the deliberation mechanism, and the ugeran procedure in Karang Tengah Village can be read as instruments for maintaining order and preventing family conflict that might otherwise arise from inheritance disputes. As reported in Subsection 1.d, informants consistently held that the potential for conflict is far lower when property is divided equally than when it is divided according to the 2:1 faraid ratio. This is consistent with Satjipto Rahardjo's view that legal sociology is essentially knowledge of law examined through patterns of social behavior within their social context, rather than a body of norms standing apart from social reality.[33]

The institutional design of ugeran points in the same direction. The layering of measurement, witnessing, and registration performs, at the level of customary institutions, much the same certainty-producing function that written

[32] Muhammad Watif et al., "Understanding Law and Society in Legal Sociology Studies," *Agency Journal of Management and Business* 4, no. 1 (January 1, 2024): 1–7, https://doi.org/10.54065/agency.4.1.2024.209.

[33] Ioannis Kampourakis, "Empiricism, Constructivism, and Grand Theory in Sociological Approaches to Law: The Case of Transnational Private Regulation," *German Law Journal* 21, no. 7 (October 19, 2020): 1411–26, https://doi.org/10.1017/glj.2020.82.

title deeds perform in state law: the division becomes publicly known, documented, and difficult to contest later. Likewise, the fact that married children, unmarried children, and disputing families are each handled differently indicates a system organized around managing risk and relationships rather than around applying a single formal rule uniformly.

c. Social Engineering: Women's Economic Change and Norm Shift

Viewed through the lens of social engineering, the shift from sepikul segendongan to Dum Dil illustrates how changes in women's socio economic condition, from being entirely dependent on men to becoming economically independent, have driven a change in the local norm governing inheritance distribution. The periodization traced in Subsection 1.b matters here: the norm changed as social structure changed, namely as women gained economic independence, rather than as religious understanding changed, which is what a social-engineering reading of legal change would predict. This is consistent with the thesis that legal change and social change dialectically influence one another: law can function as a deliberate tool for engineering a desired social order, just as shifts in society can, in turn, drive changes in prevailing law.[34] This dual character is itself unsurprising within Islamic legal sociology, which historically has never treated law as static; rather, its social-control function continually interacts with its social-engineering function, so that a community caught between competing normative pulls is never simply forced to abandon one obligation for the other, but negotiates a livable position between them.[35] Karang Tengah's persistence in observing customary procedure alongside considerable exposure to formal religious education illustrates how deeply rooted

[34] Suad Fikriawan, Syamsul Anwar, and Misnen Ardiansyah, "The Paradigm of Progressive Judge's Decision and Its Contribution to Islamic Legal Reform in Indonesia," *Al-Manahij: Jurnal Kajian Hukum Islam* 15, no. 2 (December 1, 2021): 249–62, https://doi.org/10.24090/mnh.v15i2.4730.

[35] Zainal Muttaqin, "Formalization of Islamic Law in Indonesia in the Framework of Social Engineering Theory by Roscoe Pound," *El-Mashlahah* 11, no. 2 (December 23, 2021): 97–115, https://doi.org/10.23971/elma.v11i2.2825.

communities can continue to observe long standing custom even as surrounding social institutions modernize.[36]

d. Caregiving, Contribution, and Substantive Justice

The reasons the community gives for enlarging a caregiver's share point to a distinctive conception of justice. This conception is substantive rather than formal, in that it measures fairness by each child's actual contribution and responsibility rather than by a fixed ratio, and it raises the question, taken up in Subsections 2.e and 2.g, of whether such a conception can be reconciled with a textualist reading of the Quranic ratio.

Read critically, however, the arrangement also blurs the line between filial devotion as a moral duty (birr al walidayn) and filial devotion as a compensable service; the community's own framing of harta gantungan as an earned entitlement, rather than simply a recognition of piety, is itself a datum about how far an economic logic has entered a domain that classical fiqh treats as purely devotional. Because harta gantungan also passes to the caregiving child only after the parents' death, it is the component of the practice that sits closest to the boundary between a lifetime gift and a death-triggered transfer, a point that bears directly on the classification discussed below.

e. Hibah, Urf, and the Qath'i Limit

The community's flexibility can also be explained through the concept of urf, or custom, within usul al fiqh. Al-Jurjani defined 'urf as that which the souls have settled upon by the testimony of reason and which natures have received with acceptance, adding that it is also a proof (hujjah), though one quicker to grasp.[37] Jurists generally accept valid 'urf as a supplementary source for deriving rulings, differing in scope, provided it does not contradict a definitive text. Here

[36] Muhammad Shuhufi et al., "Islamic Law and Social Media: Analyzing the Fatwa of Indonesian Ulama Council Regarding Interaction on Digital Platforms," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 2 (December 31, 2022): 823, https://doi.org/10.22373/sjhk.v6i2.15011.

[37] Syamsul Azizul Marinsah et al., "The Instrument of 'Urf in the Reform of Islamic Legal Rulings: An Analytical Study on Contemporary Fiqh," *International Journal of Academic Research in Business and Social Sciences* 15, no. 10 (October 17, 2025), https://doi.org/10.6007/IJARBSS/v15-i10/25828.

the distinction between qath'i al-thubut (certainty of transmission, as with the Qur'an) and qath'i al-dalalah (certainty of meaning, admitting a single interpretation) matters. Qur'an 4:11-12 is qath'i al-thubut, and the fixed shares of the estate, including the 2:1 ratio between sons and daughters, are commonly regarded as qath'i al-dalalah, so 'urf cannot alter the division of an estate (tirkah) after death. The argument of this study therefore does not rest on setting 'urf against Qur'an 4:11-12, but on a prior classification: because the transfers occur during the parents' lifetime, they are analyzed as hibah, a domain to which the fixed shares of tirkah do not directly apply. [38] The difficulty is that the 2:1 inheritance ratio is often regarded as falling within the domain of qath'i al dalalah, making a departure from it on the sole basis of custom difficult to justify in purely textual terms. This is not a minor technical qualification: on a strict qath'i reading, urf alone cannot license a wholesale substitution of a 1:1 for a 2:1 ratio, and scholars who hold this position would regard the Karang Tengah practice as still requiring correction, however well it functions sociologically. The present study does not resolve this normative disagreement; it uses legal sociology to explain why the practice persists, which is a different question from whether it is textually defensible.[39]

Because the property is transferred before death, the practice is analyzed here as hibah rather than as a distribution of tirkah, even though the community itself speaks of waris. Herein lies the significance of the middle path taken by the Karang Tengah community. Rather than dividing the estate after the parents' death according to faraid, they instead employ hibah during the parents' lifetime, a legal instrument that, under Article 211 of the KHI, is in fact legalized as an

[38] Muhammad Husni Abdulah Pakarti et al., "The Role and Application of 'Urf as a Source of Islamic Law: A Historical Review and Fiqhiyah Rules," *An-Nisa: Journal of Islamic Family Law* 2, no. 3 (September 29, 2025): 175–92, https://doi.org/10.63142/an-nisa.v2i3.300.

[39] Muhammad Hafis, Juliani Syafitri, and Jumni Nelli, "Pluralism and Justice in Islamic Inheritance Law," *Jurnal Hukum Dan Peradilan* 15, no. 1 (March 31, 2026): 31–58, https://doi.org/10.25216/jhp.15.1.2026.31-58.

alternative to formal inheritance.[40] Formally and juridically, therefore, this practice does not necessarily contradict Indonesia's positive Islamic law, even though, substantively, it produces an outcome different from that of faraid.

f. Indonesian Fiqh, Communal Ijtihad, and Substitute Heirs

The discourse on an Indonesian fiqh (fikih Keindonesiaan) provides further conceptual grounding for this phenomenon. Hasbi Ash-Shiddieqy distinguished between matters of creed and ritual worship ('aqidah and 'ibadah, the ta'abbudi domain), which are fixed and bound to sound textual evidence, and matters of social relations (mu'amalah, the ta'aqquli domain), which remain open to contextual ijtihad through a sociohistorical approach, since law may change with time and place as long as it does not contravene a qath'i text.[41] In a similar vein, Munawir Sjadzali proposed a reactualization of the 2:1 inheritance ratio, arguing that justice in Islamic inheritance lies not in an equal or rigidly fixed ratio but in a balance proportionate to the burden of responsibility each heir bears.[42] He was troubled by a widening gap between the textual ideal of inheritance law and the practice of Muslims who quietly avoided applying it, and argued that acknowledging this gap honestly, rather than resorting to legal subterfuge (hilah), was the more honest path.[43] This study uses both positions as an analytical lens for reading dum dil; it does not claim that informants themselves invoke either thinker.[44] The practice of Dum Dil in Karang Tengah, which takes into account each child's actual contribution through the mechanism of pending property, substantively reflects this very sense of proportional justice, even though it arises from a path of communal ijtihad rooted in family deliberation and custom, rather than from a formal scholarly fatwa.

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[40] Fauzi Fauzi, "'Urf and Its Role in The Development of Fiqh: Comparative Study of Famliy Law Between Egypt and Indonesia," *El-Usrah: Jurnal Hukum Keluarga* 7, no. 1 (June 30, 2024): 346, https://doi.org/10.22373/ujhk.v7i1.23968.

[41] Shiddieqy, *Pengantar Ilmu Fiqh*.

[42] Munawir Sjadzali, *Polemik Reaktualisasi Ajaran Islam* (Pustaka Panjimas, 1988).

[43] Sjadzali.

[44] Aris Priyadi, "Penerapan Ketentuan Tentang Hibah Berdasarkan Instruksi Presiden (INPRES) Nomor 1 Tahun 1991 Tentang Kompilasi Hukum Islam (KHI)," *Wijayakusuma Law Review* 8, no. 1 (June 10, 2026): 1–7, https://doi.org/10.51921/wlr.kr8srx76.

The practice, reported in Subsection 1.b, of admitting grandchildren alongside surviving children finds a ready theoretical anchor in Hazairin's concept of the substitute heir (ahli waris pengganti, or mawali). Hazairin argued that a grandchild whose parent has predeceased the testator is entitled to inherit the share that parent would have received, calculated without discrimination between grandsons and granddaughters, so that classical fiqh's blocking rule (hijab) need not operate as an absolute bar.[45] Read through this lens, the Karang Tengah practice of allowing grandchildren, and even adopted children, to receive a share is not simply an ad hoc departure from Islamic law but can be understood as an indigenous extension of the same impulse that led Hazairin to rework the doctrine of substitute heirs, namely a concern that a deceased child's own descendants should not be left destitute merely by an accident of timing. Hazairin's doctrine, however, covers only the substitution of a deceased child's own descendants; it does not by itself account for the inclusion of adopted children, whose entitlement in Karang Tengah has to be traced instead to the community's use of hibah, a distinct and more flexible instrument discussed in Subsection 2.e, an important qualification for any purely Hazairin-based reading of the village's practice.[46]

More broadly, the flexibility with which the parents determine the recipients is consistent with the communal character of customary inheritance law, which is oriented toward the harmony of the extended family rather than toward a rigid, category-based distribution as found in the fiqh of faraid.

g. Living Law and the Limits of Reconstruction

Even though this practice can be justified sociologically and, to a degree, on certain usul al fiqh grounds, it is important to maintain a critical and balanced stance. From a textualist normative point of view, the inheritance provisions in Surah An Nisa, verses 11 to 12, are understood by the majority of scholars to be

[45] Muhammad Mufti Al Anam, "Kewarisan Bilateral Masyarakat Muslim Jawa: Studi Komparasi Pandangan Hazairin Dan Fakta Empiris," *AL-MIKRAJ Jurnal Studi Islam Dan Humaniora (E-ISSN 2745-4584)* 5, no. 2 (February 3, 2025): 565–77, https://doi.org/10.37680/almikraj.v5i2.6891.

[46] Al Anam.

detailed and definitive, so that any systematic departure from them, however well intentioned in preserving family harmony, still calls for caution, lest it develop into a precedent that displaces the position of faraid law itself.[47] From the perspective of legal sociology and maslahah, by contrast, this practice can be understood as an adaptive response by the community to the need to preserve family unity, which is itself one of the core objectives (maqashid) underlying the sharia of inheritance in the first place. These two viewpoints cannot be fully reconciled, and this study regards them as a productive tension that warrants continued discussion rather than a one sided resolution.

What can be concluded with greater confidence is that the inheritance practice in Karang Tengah Village represents a concrete manifestation of living law, that is, law that lives and continuously negotiates with the local social, economic, and cultural structure.[48] This reading is consistent with the classical formulations of customary inheritance law offered by Soepomo, who described it as the body of rules governing the transmission of both tangible and intangible property between generations within a kin group[49], and by Ter Haar, who defined it as the intergenerational continuity and transfer of both material and immaterial assets across successive generations.[50] Such flexibility is not evidence of weak religious awareness among the community. Rather, it reflects the way the community translates the Islamic values of justice and harmony into a language and mechanism they understand and have inherited across generations.

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[47] Noorsafuan Che Noh, Khiral Anuar Daud, and Mohd Ali Mohd Yusuf, "Inheritance Distribution in Islam Between Legal Provisions and Dynamics of Its Implementation," *International Journal of Research and Innovation in Social Science* VIII, no. XII (2025): 3719–26, https://doi.org/10.47772/IJRISS.2024.8120309.

[48] Rahmad Hidayad, "The Gap Between Islamic Inheritance Law and Community Practice: A Legal Sociological Analysis of Inheritance Distribution in Indonesian Society," *Jurnal Indonesia Sosial Sains* 7, no. 5 (May 16, 2026): 2382–90, https://doi.org/10.59141/jiss.v7i5.2325.

[49] Roy Prabowo Lenggono, "Islamic Inheritance Law in Practice Among Multiethnic Muslim Families in Indonesia," *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 2 (December 5, 2025): 127–43, https://doi.org/10.65586/insani.v1i2.39.

[50] 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, https://doi.org/10.22373/sjhk.v6i2.13882.

It is worth being precise about the strength of the pluralism claim being made here. In the distinction familiar from the legal pluralism literature, weak legal pluralism describes a single state law that merely delegates space to custom, whereas strong legal pluralism describes multiple normative orders operating with real, unranked authority within the same social field. Karang Tengah's practice sits closer to the weak end of that spectrum than a first reading might suggest: hibah under Article 211 of the KHI supplies the very doorway through which Dum Dil enters formal legal recognition, so that what looks like an autonomous customary order is, on closer inspection, custom operating inside a space that positive Islamic law has already opened for it. Describing the village's practice as living law is therefore accurate, but it should not be read as evidence of a customary order independent of, or competing with, the state's legal system; it is better read as evidence of how much interpretive room formal Indonesian Islamic law already leaves for local negotiation.

This reading also resonates with the broader jurisprudential observation that Islamic law, notwithstanding its doctrinal and normative character, has always kept open a door for ijtihad through which practising communities can adjust received rules to lived reality.[51] This is consistent with the sociological understanding that social change consists precisely in shifts in a society's cultural patterns, structures, and behavior over time.[52] Karl Llewellyn's remark that a society's underlying conceptions move, and typically move faster than its formal law, is a fitting description of what has happened in Karang Tengah: each part of the received doctrine periodically requires re examination to establish whether it still fits the community it is meant to serve.[53] Equal distribution should therefore be positioned, as this study argues in its conclusion, as a preventive

[51] Basri et al.

[52] Hifdhotul Munawaroh et al., "Maslahah and Justice in Islamic Inheritance: A Normative and Jurisprudential Inquiry," *Ekspose: Jurnal Penelitian Hukum Dan Pendidikan* 24, no. 2 (October 1, 2025): 184–201, https://doi.org/10.30863/ekspose.v24i2.9990.

[53] Ilyas Ilyas et al., "The Accommodation of Customary Law to Islamic Law: Distribution of Inheritance in Aceh from a Pluralism Perspectives," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 7, no. 2 (May 28, 2023): 897, https://doi.org/10.22373/sjhk.v7i2.15650.

option grounded in the willing consent of all the children involved, rather than as a wholesale rejection of Islamic inheritance law.

C. CONCLUSION

This study demonstrates that lifetime property distribution among Javanese Muslims in Karang Tengah Village operates through a customary mechanism that integrates family deliberation, social responsibility, and Islamic legal norms. Property allocation is determined through dicungke and formalized through ugeran, while the prevailing distribution pattern has shifted from sepikul segendongan (2:1) toward dum dil (1:1). This shift reflects changing perceptions of justice, women's economic roles, and efforts to prevent family disputes. The allocation of harta gantungan to children responsible for parental care further illustrates how customary practices accommodate individual contributions and family responsibilities.

From the perspective of Islamic legal sociology, these practices represent a negotiation between faraid, hibah, and customary law rather than a complete rejection of Islamic inheritance principles. The distribution of property during the parents' lifetime is legally understood as hibah, while customary deliberation and witnessing mechanisms function as instruments of social control by promoting legal certainty and family harmony. The transformation toward equal distribution also reflects the interaction between changing social conditions and local legal practices. Accordingly, the findings demonstrate that customary property distribution constitutes a form of living law that accommodates substantive justice and social needs within the broader framework of Islamic legal pluralism. This study contributes to understanding how Muslim communities negotiate normative religious provisions and customary practices in response to changing social realities.

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