



## Beyond *farā'id* Texts: *Maqāṣid al-Sharī'ah* and Substantive Justice in the Banjar Tradition of Equal Inheritance

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**Abstract:**

**Background and objective:** This study critically examines the Banjar tradition of equal inheritance distribution as a model of substantive justice that challenges the dominance of *farā'id*-based formalism in Islamic inheritance law. Although classical jurisprudence prescribes fixed proportional shares, contemporary Islamic legal scholarship has yet to fully theorize how *maqāṣid al-sharī'ah* can operate not merely as a supplementary interpretive tool, but as an autonomous normative framework capable of reconfiguring inheritance principles toward substantive justice.

**Methodology:** This research adopts a normative juridical approach grounded in systematic textual and conceptual analysis of the Qur'an, hadith, and classical as well as contemporary works of *uṣūl al-fiqh*, with particular emphasis on *maqāṣid al-sharī'ah* theory as developed by scholars such as al-Shāṭibī and its modern reinterpretations.

**Findings:** The analysis demonstrates that equal inheritance distribution can be justified within a *maqāṣid*-oriented framework that prioritizes justice (*'adl*), welfare (*maṣlahah*), and the protection of lineage and wealth (*ḥifẓ al-nasl* and *ḥifẓ al-māl*). By reinterpreting inheritance norms through the hierarchy of legal objectives, the study argues that classical proportional rules should be understood as context-bound applications rather than immutable prescriptions, thereby opening space for alternative distributive models that better reflect contemporary socio-economic realities. This study contributes to Islamic legal theory by advancing a paradigmatic shift from rule-centered formalism to objective-oriented reasoning, positioning *maqāṣid al-sharī'ah* as a central epistemological foundation for reconstructing inheritance law and legitimizing substantively just outcomes beyond rigid textualism in modern plural legal contexts.

**Keywords:** *Maqāṣid al-Syarī'ah*, Distributive Justice, Banjar Inheritance, Customary Law, Islamic Jurisprudence

## Introduction

The Banjar Muslim community of South Kalimantan maintains a distinctive inheritance practice called *Badamai*, which distributes property equally among all heirs regardless of gender, fundamentally diverging from the classical Islamic law principle of 2:1 male-to-female ratios established in Quranic provisions.<sup>1</sup> This practice represents neither ignorance of Islamic law nor simple deviation but rather emerges as a sophisticated jurisprudential response to local conditions that seeks to maintain family harmony while achieving substantive justice.<sup>2</sup> The phenomenon has become increasingly visible in contemporary legal discourse as courts, scholars, and community leaders recognize the legitimacy of customary mechanisms that produce equitable outcomes aligned with Islamic normative values.<sup>3</sup>

The urgency of examining Banjar inheritance practices stems from multiple convergent pressures on contemporary Islamic family law. Indonesia's Muslim majority population faces ongoing tensions between formal state-codified Islamic law (Compilation of Islamic Law/KHI) and lived customary practices that frequently diverge significantly from textual prescriptions.<sup>4</sup> When inheritance disputes arise, families and courts confront contradictions between formal legal provisions and customary justice mechanisms that have proven effective in maintaining social cohesion while achieving equitable outcomes.<sup>5</sup>

Gender justice constitutes another dimension of urgency. Contemporary Muslim societies increasingly demand inheritance systems that provide substantive equality while respecting Islamic principles.<sup>6</sup> The Banjar *badamai* practice addresses this demand through a legally sophisticated customary mechanism that provides equal distribution without violating core Islamic objectives concerning justice, family preservation, and wealth protection.<sup>7</sup> Understanding how this operates becomes essential for developing Islamic legal frameworks responsive to modern demands for substantive equality.

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<sup>1</sup> Siti Nur Syifa dkk., "Analysis of Fairness in Inheritance Distribution according to *Badamai* Customs among the Muslim Banjar Community in South Kalimantan," *Suhuf: International Journal of Islamic Studies* 37, no. 2 (2025): p. 322–32.

<sup>2</sup> Maksym V. Korniienko Ahmad Sukris Sarmadi Anwar Hafidzi, Mohlis Mohlis, Oleksandr Yunin, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyyat and Restorative Justice in Banjar Inheritance Disputes," *Jurnal Ilmiah Al-Syir'ah*, advance online publication, 2025, <https://doi.org/10.30984/jis.v23i2.3673>.

<sup>3</sup> Alias Azhar Wahidah Wahidah, "Implementation of Faraidh's Provisions in Hibah Wasiat (A Case in South Banjar Kalimantan)," *Institut Agama Islam Negeri Raden Intan Lampung*, advance online publication, 2020, <https://doi.org/10.24042/adalah.v16i2.4578>.

<sup>4</sup> Abdul Hafidz Miftahuddin, "Comparison of Customary Inheritance and the Compilation of Islamic Law: A Study of Inheritance Distribution in Indonesia," *VRISPRAAK: International Journal of Law*, advance online publication, 2024, <https://doi.org/10.59689/vris.v8i2.1158>.

<sup>5</sup> Riyanta Riyanta Deri Eka Putra, "Ignoring Islamic Law for Family Harmony: The Practice of Delaying Inheritance Distribution in the Indigenous Muslim Community of Kampar, Riau," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum*, advance online publication, 2024, <https://doi.org/10.14421/ajish.v58i1.1433>. also read Rahmadanil Rahmadanil dan Rifka Zuwanda, "Inheritance Law in Minangkabau: A Comparative Study of the Application of Islamic and Customary Inheritance Law in Koto Tengah Subdistrict and Nanggalo Padang City: (Hukum Waris Di Minangkabau: Studi Komparatif Penerapan Hukum Waris Islam Dan Adat Di Kec. Koto Tengah Dan Nanggalo Kota Padang)," *El-Qist: Journal of Islamic Economics and Business (JIEB)* 11, no. 2 (November 2021): 151–63, <https://doi.org/10.15642/elqist.2021.11.2.151-163>.

<sup>6</sup> Basri Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice," *Journal of Nafaqah*, advance online publication, 2025, <https://doi.org/10.62872/mvrxrfe02>.

<sup>7</sup> Ghifari Hirza Firhan Ali Siti Nur Syifa A. Akmal, Gusti Muzainah, Ahmad Ahmad, "Analysis of Fairness in Inheritance Distribution according to *Badamai* Customs among the Muslim Banjar Community in South Kalimantan," *SUHUF*, advance online publication, 2025, <https://doi.org/10.23917/suhuf.v37i2.13106>.

International Islamic legal scholarship has increasingly recognized that *maqāṣid al-sharī'ah* (the objectives of Islamic law) provides a dynamic interpretive framework enabling legal adaptation to contemporary contexts.<sup>8</sup> Scholars like al-Shāṭibī and contemporary theorists have demonstrated that Islamic law's core aims to maintain religion, life, intellect, lineage, and wealth permit multiple mechanisms of implementation responsive to particular circumstances.<sup>9</sup> Global literature addressing inheritance law reform emphasizes how substantive justice principles can accommodate alternative distribution patterns, particularly those promoting gender equality.<sup>10</sup>

However, research analyzing how specific Muslim communities operationalize *maqāṣid al-sharī'ah* through customary inheritance practices remains limited. The scholarly literature primarily focuses on formal jurisprudential theory or broad comparative frameworks, with insufficient attention to ethnographic analysis of how communities synthesize Islamic objectives with local legal mechanisms.<sup>11</sup> This research gap is particularly acute regarding Southeast Asian Muslim communities, where diverse customary practices intersect Islamic law in complex ways requiring nuanced analysis.<sup>12</sup>

Indonesian Islamic legal scholarship has produced substantial documentation of customary inheritance practices across various ethnic communities.<sup>13</sup> Studies of Minangkabau matrilineal inheritance, Balinese customary law, and West Javanese practices demonstrate diverse approaches to wealth distribution reflecting particular kinship systems and social values.<sup>14</sup> Regional research on South Kalimantan specifically has documented the *Badamai* practice and its role in resolving inheritance disputes.<sup>15</sup> with some analysis examining its fairness through Rawlsian justice theory.<sup>16</sup>

Yet Indonesian scholarship has not systematically analyzed how Banjar equal distribution practices ground themselves in *maqāṣid al-sharī'ah* principles or how

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<sup>8</sup> Syukri Iska Nurullia Muslim, "Prinsip Dasar Aspek Distribusi dalam Ekonomi Islam: Rekonstruksi Filosofis Berbasis *Maqāṣid al-syarī'ah*-Shari'ah dan Formulasi Kebijakan Kontemporer," *Jurnal ekonomi dan bisnis Dharma Andalas*, advance online publication, 2026, <https://doi.org/10.47233/jebd.v28i1.2408>. Also read Siti Musfiqoh, "Life Style as Consumer Satisfaction in the Maqāṣid of Islamic Economics," *El-Qist: Journal of Islamic Economics and Business (JIEB)* 13, no. 1 (Juni 2023): 83–99, Indonesia, <https://doi.org/10.15642/elqist.2023.13.1.83-99>.

<sup>9</sup> Agama Dede Nurwahidah Yadi Janwari, D. Jubaedah, Al-Syathibi. Adapun Hasil, Sesuai Dengan, Prinsip Ketauhidan, Keadilan, Dan Keseimbangan Kemaslahatan, Yakni Kebutuhan, "Konsep Pemikiran Ekonomi dan *Maqāṣid al-syarī'ah* Syariah Perspektif Imam Al-Syathibi," *MAMEN: Jurnal Manajemen*, advance online publication, 2024, <https://doi.org/10.55123/mamen.v3i3.3918>.

<sup>10</sup> A. Alwi, "Renewal of Islamic Inheritance Law in Indonesia: An Examination of Wasatiyyah Theory," *ADHKI: JOURNAL OF ISLAMIC FAMILY LAW*, advance online publication, 2025, <https://doi.org/10.37876/adhki.v5i2.154>.

<sup>11</sup> Chaula Lutfia I. Ngazizah, "Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations," *Online Journal of Research in Islamic Studies*, advance online publication, 2025, <https://doi.org/10.22452/ris.vol12no2.2>.

<sup>12</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>13</sup> Miftahuddin, "Comparison of Customary Inheritance and the Compilation of Islamic Law: A Study of Inheritance Distribution in Indonesia."

<sup>14</sup> Hazar Kusmayanti Tyara Maharani Permadi Djanuadi Djanuadi, "The Practice of Parental Inheritance Distribution in West Java in Relation to Islamic Law," *Jurnal Poros Hukum Padjadjaran*, advance online publication, 2024, <https://doi.org/10.23920/jphp.v6i1.1711>.

<sup>15</sup> Wahidah Wahidah, "Implementation of Faraidh's Provisions in Hibah Wasiat (A Case in South Banjar Kalimantan)."

<sup>16</sup> Siti Nur Syifa, "Analysis of Fairness in Inheritance Distribution according to Badamai Customs among the Muslim Banjar Community in South Kalimantan."

this customary mechanism operationalizes core Islamic objectives. Most existing studies treat customary practices and Islamic law as separate spheres requiring reconciliation rather than exploring how communities synthesize them into integrated jurisprudential frameworks.<sup>17</sup> This gap prevents a fuller understanding of how Islamic law functions as a living, adaptive system responsive to community needs while maintaining fidelity to core normative values.

This research formulates the following primary problem: How can the Banjar practice of equal inheritance distribution be justified and understood through a *maqāṣid al-sharī'ah* framework, and what does this synthesis reveal about the nature of Islamic jurisprudence in pluralistic societies? Specific research questions include: (1) What are the jurisprudential mechanisms through which Banjar communities legitimate alternative inheritance distribution patterns while maintaining Islamic normative compliance? (2) How do the four components of *badamai* (*bacuur*, *basuluh*, *bapatut*, and consensus-based deliberation) operationalize *maqāṣid al-sharī'ah* objectives? (3) What implications does this community-based approach to achieving justice hold for reconceptualizing inheritance law in contemporary Muslim societies facing demands for substantive equality?

Theoretically, this research bridges several significant domains. Within Islamic jurisprudence, it demonstrates how *maqāṣid al-sharī'ah* functions not merely as an abstract philosophical principle but as an operational framework enabling communities to develop legally sophisticated responses to contemporary challenges.<sup>18</sup> The research contributes to evolving theories of contextual Islamic reasoning (*fiqh al-aqalliyyāt*), showing how customary communities engage in legitimate *ijtihad* through deliberative processes grounded in Islamic values.<sup>19</sup>

Within positive law, the analysis reveals how Indonesian legal pluralism—accommodating multiple legal systems simultaneously—can become a resource rather than a mere contradiction when understood through substantive justice frameworks.<sup>20</sup> The study contextualizes Banjar practices within Indonesia's constitutional commitment to recognizing customary law and Islamic jurisprudence while pursuing substantive justice, demonstrating how community-based mechanisms can satisfy requirements of multiple legal systems simultaneously.<sup>21</sup>

This study pursues two main objectives. First, to critically examine the normative justification of equal inheritance distribution within a *maqāṣid al-sharī'ah* framework, particularly in relation to the principles of justice (*‘adl*), public welfare (*maṣlahah*), and the protection of lineage and wealth (*ḥifẓ al-nasl* and *ḥifẓ al-māl*). This objective seeks to demonstrate that alternative distributive models can be grounded in the higher objectives of Islamic law rather than confined to formal proportional rules. Second, to analyze the extent to which a *maqāṣid*-oriented

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<sup>17</sup> Idris Saleh Arbanur Rasyid Rayendriani Fahmei Lubis, “Contestation of Customary Law and Islamic Law in Inheritance Distribution: A Sociology of Islamic Law Perspective,” *Al-Ahkam*, advance online publication, 2024, <https://doi.org/10.21580/ahkam.2024.34.2.20843>.

<sup>18</sup> May Laylatul Istiqomah, “Rekonstruksi Hukum Ekonomi Syariah dalam Perspektif *Maqāṣid al-syarī'ah* Al-Sharī'ah,” *Jurnal Pustaka Cendekia Hukum dan Ilmu Sosial*, advance online publication, 2025, <https://doi.org/10.70292/pchukumsosial.v3i1.125>.

<sup>19</sup> Ahmad Sukris Sarmadi, “Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyyat and Restorative Justice in Banjar Inheritance Disputes.”

<sup>20</sup> Miftahuddin, “Comparison of Customary Inheritance and the Compilation of Islamic Law: A Study of Inheritance Distribution in Indonesia.”

<sup>21</sup> Ahmad Sukris Sarmadi, “Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyyat and Restorative Justice in Banjar Inheritance Disputes.”

approach enables the reinterpretation of classical *farā'id* provisions as context-bound legal applications rather than immutable prescriptions, thereby providing a legitimate jurisprudential basis for developing substantively just inheritance models in contemporary Islamic legal discourse.

## Method

This study adopts a normative juridical approach that emphasizes textual and conceptual analysis within the framework of Islamic legal scholarship. The research is primarily grounded in the examination of authoritative Islamic legal sources, including the Qur'an, particularly the inheritance verses in QS al-Nisā' [4]: 11–14, hadith literature, and classical as well as contemporary works on *fiqh al-mawāris* and *uṣūl al-fiqh*. These sources are systematically analyzed through the perspective of *maqāsid al-sharī'ah* to construct a coherent normative foundation for evaluating alternative models of inheritance distribution.<sup>22</sup>

In this framework, the study does not treat legal texts as fixed and isolated prescriptions, but rather as part of a broader juristic tradition that allows interpretative flexibility. The analysis focuses on reconstructing the underlying objectives of Islamic law, particularly the principles of justice (*'adl*), public welfare (*maṣlahah*), and the protection of lineage and wealth (*hifz al-nasl* and *hifz al-māl*), as key parameters in assessing the legitimacy of inheritance distribution models.<sup>23</sup> Through this approach, classical *farā'id* provisions are examined not merely as rigid legal rules, but as context-bound juristic formulations that may be reinterpreted in light of higher legal objectives.

The analytical focus of this study is directed toward the conceptual structure of Islamic inheritance law, particularly the relationship between formal *farā'id* doctrines and the objective-oriented framework of *maqāsid al-sharī'ah*. The Banjar tradition of equal inheritance distribution is positioned within this study not as an empirical object of field investigation, but as a jurisprudential case that illustrates the possibility of alternative distributive reasoning within Islamic legal thought. In this regard, the analysis situates the case within broader scholarly debates on the interaction between Islamic law and customary practices, highlighting how such practices may reflect objective-based interpretations of Islamic legal principles.<sup>24</sup>

The data utilized in this research are derived exclusively from library-based sources, encompassing both primary and secondary materials. Primary sources include foundational Islamic texts such as the Qur'an and hadith, as well as classical jurisprudential works from various schools of Islamic law. Secondary sources consist of contemporary academic literature addressing *maqāsid al-sharī'ah*, Islamic

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<sup>22</sup> B. Basri, "Inheritance distribution in Islamic family law: A juridical study of the principle of gender justice," *Journal of Nafaqah*, advance online publication, 2025, <https://doi.org/10.62872/mvxrfe02>; A. H. Miftahuddin, "Comparison of customary inheritance and the compilation of Islamic law: A study of inheritance distribution in Indonesia," *VRISPRAAK: International Journal of Law*, advance online publication, 2024, <https://doi.org/10.59689/vris.v8i2.1158>.

<sup>23</sup> M. L. Istiqomah, "Rekonstruksi hukum ekonomi syariah dalam perspektif maqāsid al-sharī'ah," *Jurnal Pustaka Cendekia Hukum dan Ilmu Sosial*, advance online publication, 2025, <https://doi.org/10.70292/pchukumsosial.v3i1.125>; N. Muslim dan S. Iska, "Prinsip dasar aspek distribusi dalam ekonomi Islam: Rekonstruksi filosofis berbasis maqāsid al-sharī'ah dan formulasi kebijakan kontemporer," *Jurnal Ekonomi dan Bisnis Dharma Andalas*, advance online publication, 2026, <https://doi.org/10.47233/jebd.v28i1.2408>.

<sup>24</sup> A. Rasyid, I. Saleh, dan R. F. Lubis, "Contestation of customary law and Islamic law in inheritance distribution: A sociology of Islamic law perspective," *Al-Ahkam*, advance online publication, 2024, <https://doi.org/10.21580/ahkam.2024.34.2.20843>; Siti Nur Syifa, "Analysis of Fairness in Inheritance Distribution according to Badamai Customs among the Muslim Banjar Community in South Kalimantan."

inheritance law reform, and the dynamics between Islamic law and customary legal systems.<sup>25</sup> These sources are selected for their scholarly credibility and relevance to the research problem, thereby ensuring a rigorous and comprehensive theoretical framework.

Data collection is conducted through systematic documentary and textual analysis, involving the identification, selection, and critical reading of relevant legal texts and scholarly works. The study prioritizes peer-reviewed publications and authoritative references to maintain academic validity and conceptual precision.

In analyzing the data, this study employs a qualitative doctrinal method that integrates interpretative, conceptual, and comparative approaches. Interpretative analysis is used to understand the meaning and implications of legal texts within both classical and contemporary contexts. Conceptual analysis is applied to reconstruct legal reasoning grounded in *maqāṣid al-sharī'ah*, thereby enabling the formulation of a coherent normative argument. Meanwhile, comparative analysis is utilized to evaluate the relationship between classical *farā'id* formulations and alternative models of inheritance distribution. Through this integrated analytical framework, the study aims to critically assess the extent to which equal inheritance distribution can be justified as a legitimate outcome within Islamic legal theory, viewed through an objective-oriented lens.

## Results

### Banjar Inheritance Practice and *Badamai* Mechanism

Field research documents that *Badamai* constitutes a comprehensive customary institution encompassing genealogical clarification (*bacuur*), moral-religious consultation (*basuluh*), and consensus-based deliberation (*bapatut*) through which Banjar communities achieve inheritance distribution.<sup>26</sup> Unlike formal judicial processes operating through adversarial litigation, *badamai* functions as a deliberative mechanism emphasizing dialogue, relationship repair, and collective decision-making.<sup>27</sup> The practice results in substantially equal distribution of inheritance among heirs regardless of gender, replacing classical 2:1 male-to-female ratios with equitable allocation reflecting contemporary understandings of justice and family responsibility.<sup>28</sup>

The mechanism demonstrates that Banjar communities possess sophisticated legal institutions capable of addressing complex inheritance questions while maintaining family relationships and achieving outcomes perceived as just by all parties.<sup>29</sup> Equal distribution outcomes occur not through ignorance of classical Islamic law but through conscious jurisprudential reasoning emphasizing substantive justice and family welfare.<sup>30</sup> Interviews with community leaders reveal

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<sup>25</sup> I. Ngazizah dan C. Lutfia, "Inheritance distribution in Indonesia: Dialectics of Islamic law and social relations," *Online Journal of Research in Islamic Studies*, advance online publication, 2025, <https://doi.org/10.22452/ris.vol12no2.2>.

<sup>26</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>27</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>28</sup> Siti Nur Syifa, "Analysis of Fairness in Inheritance Distribution according to Badamai Customs among the Muslim Banjar Community in South Kalimantan."

<sup>29</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>30</sup> Wahidah Wahidah, "Implementation of Faraidh's Provisions in Hibah Wasiat (A Case in South Banjar Kalimantan)."

deliberate choices to implement equal distribution based on an assessment that such allocation better serves Islamic objectives concerning justice, family preservation, and community welfare than classical proportional systems.<sup>31</sup>

The *badamai* process involves sequential steps emphasizing transparency and consensus. *Bacuur* (genealogical tracing) establishes clear identification of all legal heirs through examination of kinship relationships and inheritance rights based on Islamic law.<sup>32</sup> This genealogical phase ensures that distribution proceeds with a clear understanding of who constitutes rightful heirs under Islamic jurisprudence. *Basuluh* (moral-religious consultation) involves consultation with Islamic scholars and customary leaders regarding how best to distribute inheritance, achieving justice consistent with Islamic principles and community values.<sup>33</sup>

*Bapatut* (consensus-based deliberation) constitutes the primary decision-making phase, where all heirs participate in discussing and negotiating distribution arrangements.<sup>34</sup> This deliberative process emphasizes achieving agreement through reasoned discussion rather than imposing predetermined formulas. Throughout all phases, community emphasis on relationship preservation, family unity, and avoidance of conflict shapes decision-making.<sup>35</sup> The entire process occurs outside the formal judicial system, yet generates outcomes satisfying both Islamic jurisprudential requirements and contemporary justice demands.<sup>36</sup>

In practice, *badamai* proceeds as follows: Upon death of property owner, family members gather with customary leader (*pemangku adat*) and respected community members. Genealogical phase involves discussion establishing clear kinship relationships determining who qualifies as heir under Islamic law, addressing questions regarding adopted children, children from multiple marriages, and other complex family situations.<sup>37</sup> Discussion specifically references Islamic jurisprudential principles, with customary leaders explaining relevant Quranic provisions and established Islamic law concerning inheritance.<sup>38</sup>

Consultation phase involves inviting Islamic scholars to address how inheritance distribution should proceed consistent with Islamic principles and community welfare.<sup>39</sup> Scholars address participants' questions regarding Islamic law while acknowledging that community has legitimate flexibility in implementation.<sup>40</sup> Deliberative phase constitutes extended discussion where family members voice views regarding distribution, express concerns about particular heirs' circumstances,

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<sup>31</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>32</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>33</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>34</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>35</sup> Siti Nur Syifa, "Analysis of Fairness in Inheritance Distribution according to Badamai Customs among the Muslim Banjar Community in South Kalimantan."

<sup>36</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>37</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>38</sup> Wahidah Wahidah, "Implementation of Faraidh's Provisions in Hibah Wasiat (A Case in South Banjar Kalimantan)."

<sup>39</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>40</sup> Siti Nur Syifa, "Analysis of Fairness in Inheritance Distribution according to Badamai Customs among the Muslim Banjar Community in South Kalimantan."

discuss family harmony considerations, and negotiate potential arrangements.<sup>41</sup> Unlike formal litigation where judge imposes decision, deliberative phase emphasizes achieving consensus through reasoned discussion and mutual agreement.

Distribution outcomes typically result in equal allocation among heirs, though specific arrangements may vary reflecting particular family circumstances.<sup>42</sup> If property is indivisible (land, house, business), heirs may agree that one heir retains property while others receive equivalent monetary compensation.<sup>43</sup> If multiple daughters and sons exist, equal division distributes fixed portions to each heir equally.<sup>44</sup> Wills and testamentary provisions created prior to death may structure some distribution, yet *badamai* process provides mechanism for modifying testamentary arrangements if family consensus supports different allocation.<sup>45</sup> The outcome document—often recorded in writing before witnesses—specifies distribution arrangement and explains reasoning behind specific allocation.<sup>46</sup>

### ***Maqāṣid al-Syarī'ah* Analysis of *Badamai* Practice**

Analysis demonstrates that Banjar equal distribution practice operationalizes multiple core *maqāṣid al-sharī'ah* objectives, providing robust jurisprudential grounding within Islamic legal tradition.<sup>47</sup> The practice fundamentally serves *hifz al-mal* (preservation of wealth) by ensuring that inheritance transfers to rightful heirs in clear, dispute-minimizing manner preventing wealth loss through family conflict or legal proceedings.<sup>48</sup> By producing agreed-upon allocations preventing subsequent litigation, *badamai* protects inherited wealth from depletion through court costs and family-destructive disputes.<sup>49</sup>

Equally important, *badamai* serves *hifz an-nasl* (preservation of lineage) by maintaining family relationships and collective identity despite wealth distribution.<sup>50</sup> Unlike adversarial judicial processes that frequently damage family relationships, *badamai* emphasizes maintaining kinship bonds and collective family welfare alongside individual inheritance rights.<sup>51</sup> Equal distribution reflects commitment to treating all family members as equally valued members of lineage, reinforcing

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<sup>41</sup> Ahmad Sukris Sarmadi, “Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes.”

<sup>42</sup> Siti Nur Syifa, “Analysis of Fairness in Inheritance Distribution according to Badamai Customs among the Muslim Banjar Community in South Kalimantan.”

<sup>43</sup> Wahidah Wahidah, “Implementation of Faraidh’s Provisions in Hibah Wasiat (A Case in South Banjar Kalimantan).”

<sup>44</sup> Ahmad Sukris Sarmadi, “Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes.”

<sup>45</sup> Wahidah Wahidah, “Implementation of Faraidh’s Provisions in Hibah Wasiat (A Case in South Banjar Kalimantan).”

<sup>46</sup> Ahmad Sukris Sarmadi, “Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes.”

<sup>47</sup> Nurullia Muslim, “Prinsip Dasar Aspek Distribusi dalam Ekonomi Islam: Rekonstruksi Filosofis Berbasis *Maqāṣid al-syarī'ah*-Shari’ah dan Formulasi Kebijakan Kontemporer.”

<sup>48</sup> Ahmad Sukris Sarmadi, “Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes.”

<sup>49</sup> Siti Nur Syifa, “Analysis of Fairness in Inheritance Distribution according to Badamai Customs among the Muslim Banjar Community in South Kalimantan.”

<sup>50</sup> Ahmad Sukris Sarmadi, “Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes.”

<sup>51</sup> Ahmad Sukris Sarmadi, “Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes.”

familial solidarity rather than creating hierarchy based on gender.<sup>52</sup> Furthermore, the practice serves *hifz al-'aql* (preservation of intellect) through deliberative decision-making emphasizing reasoned discussion and transparent explanation of distribution rationale.<sup>53</sup>

The practice demonstrates alignment with *al-adl* (justice) objective within *maqāsid al-sharī'ah* framework.<sup>54</sup> Equal distribution achieves substantive justice by allocating wealth according to contemporary understandings of fairness rather than classical proportional systems that the community perceives as inadequately addressing modern circumstances.<sup>55</sup> Community reasoning emphasizes that justice requires accounting for modern women's economic participation, independent livelihoods, and equal familial responsibility, justifying equal distribution as more just allocation than classical 2:1 ratios.<sup>56</sup> This jurisprudential reasoning demonstrates that *maqāsid al-sharī'ah* framework permits, indeed encourages, modification of classical rules when such modification better serves core Islamic objectives.<sup>57</sup>

The *badamai* mechanism operationalizes Islamic objectives through explicit institutional design emphasizing transparency, consensus-building, and Islamic normative compliance.<sup>58</sup> Genealogical clarification (*bacuur*) operationalizes Islamic law requirements ensuring that only rightful Islamic heirs receive distribution.<sup>59</sup> Religious consultation (*basuluh*) ensures that distribution is grounded in explicit Islamic jurisprudence, demonstrating commitment to Islamic legal compliance.<sup>60</sup> Deliberative consensus (*bapatut*) operationalizes Islamic emphasis on community agreement (*ijmā'*) and consultation (*shūrā*) as mechanisms for developing legitimate legal solutions.<sup>61</sup>

Equal distribution outcomes operationalize *maqāsid al-sharī'ah* objectives by preventing wealth concentration that exacerbates family inequality and conflict.<sup>62</sup> By distributing inheritance equally, *badamai* ensures that all heirs achieve resource security supporting independent economic activity and family dignity.<sup>63</sup> Women heirs receiving equal shares obtain independent wealth bases not dependent on male family members' discretion, supporting both individual autonomy and family welfare.<sup>64</sup> This outcome operationalizes Islamic commitment to women's economic

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<sup>52</sup> Siti Nur Syifa, "Analysis of Fairness in Inheritance Distribution according to Badamai Customs among the Muslim Banjar Community in South Kalimantan."

<sup>53</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>54</sup> Istiqomah, "Rekonstruksi Hukum Ekonomi Syariah dalam Perspektif *Maqāsid al-syarī'ah* Al-Shari'ah."

<sup>55</sup> Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice."

<sup>56</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>57</sup> Nurullia Muslim, "Prinsip Dasar Aspek Distribusi dalam Ekonomi Islam: Rekonstruksi Filosofis Berbasis *Maqāsid al-syarī'ah* Al-Shari'ah dan Formulasi Kebijakan Kontemporer."

<sup>58</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>59</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>60</sup> Wahidah Wahidah, "Implementation of Faraidh's Provisions in Hibah Wasiat (A Case in South Banjar Kalimantan)."

<sup>61</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>62</sup> Siti Nur Syifa, "Analysis of Fairness in Inheritance Distribution according to Badamai Customs among the Muslim Banjar Community in South Kalimantan."

<sup>63</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>64</sup> Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice."

rights and dignity, going beyond minimal legal requirements toward substantive justice implementation.<sup>65</sup>

Contemporary Islamic legal scholarship increasingly recognizes that classical jurisprudential rules represent historical applications of timeless Islamic principles to particular circumstances, not immutable legal commands.<sup>66</sup> Al-Shatibi's classical *maqāṣid al-sharī'ah* theory established that Islamic law aims fundamentally at human welfare and justice, with specific rules being instrumental toward achieving these objectives rather than absolute values.<sup>67</sup> When particular circumstances change, jurisprudential rules appropriately change to continue serving underlying *maqāṣid al-sharī'ah* objectives.<sup>68</sup>

Banjar equal distribution practice exemplifies this jurisprudential flexibility operating through *fiqh al-aqalliyyāt* (Islamic reasoning for minorities), framework permitting Muslims in minority or plural contexts to develop modified legal positions maintaining Islamic legitimacy while responding to local circumstances.<sup>69</sup> Equal distribution constitutes legitimate alternative jurisprudential position supported by *maqāṣid al-sharī'ah* reasoning: if equal distribution better serves justice, family preservation, and community welfare objectives than classical proportional distribution, Islamic law legitimately permits equal allocation.<sup>70</sup> This reasoning operates within established Islamic jurisprudential tradition, demonstrating how Islamic law functions as living, adaptive system rather than fixed, unchanging set of rules.<sup>71</sup>

Importantly, Banjar practice reveals that equal distribution does not require abandoning Islamic jurisprudential categories but rather implementing these categories with contextual flexibility.<sup>72</sup> The practice maintains Islamic requirements that only legitimate Islamic heirs receive distribution, follows Islamic procedural emphasis on consensus and deliberation, and grounds itself explicitly in Islamic principles.<sup>73</sup> Yet implementation results in different substantive outcome (equal rather than proportional distribution) based on judgment that such outcome better serves Islamic *maqāṣid al-sharī'ah* objectives in contemporary Banjar circumstances.<sup>74</sup>

## Implications and Justice Model

The Banjar *badamai* practice suggests transformative model for understanding and implementing distributive justice in contemporary Islamic contexts, moving beyond conventional dichotomy between formal Islamic law and customary practice toward recognition of multiple legitimate mechanisms for achieving Islamic justice

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<sup>65</sup> Nurullia Muslim, "Prinsip Dasar Aspek Distribusi dalam Ekonomi Islam: Rekonstruksi Filosofis Berbasis Maqashid al-Shari'ah dan Formulasi Kebijakan Kontemporer."

<sup>66</sup> Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice."

<sup>67</sup> Dede Nurwahidah, "Konsep Pemikiran Ekonomi dan Maqashid Syariah Perspektif Imam Al-Syathibi."

<sup>68</sup> Nurullia Muslim, "Prinsip Dasar Aspek Distribusi dalam Ekonomi Islam: Rekonstruksi Filosofis Berbasis Maqashid al-Shari'ah dan Formulasi Kebijakan Kontemporer."

<sup>69</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>70</sup> Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice."

<sup>71</sup> I. Ngazizah, "Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations."

<sup>72</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>73</sup> Wahidah Wahidah, "Implementation of Faraidh's Provisions in Hibah Wasiat (A Case in South Banjar Kalimantan)."

<sup>74</sup> Siti Nur Syifa, "Analysis of Fairness in Inheritance Distribution according to Badamai Customs among the Muslim Banjar Community in South Kalimantan."

objectives.<sup>75</sup> This model emphasizes that justice emerges through deliberative processes emphasizing transparency, consensus, and responsiveness to particular circumstances, rather than through mechanical application of predetermined rules.<sup>76</sup> The practice demonstrates that substantive justice sometimes requires modifying formal rules when such modification better serves core *maqāṣid al-sharī'ah* objectives.<sup>77</sup>

The *badamai* model reveals that customary institutions can embody sophisticated jurisprudential reasoning integrating Islamic law with contextual knowledge and community values.<sup>78</sup> Rather than viewing customary institutions as obstacles to Islamic law implementation, this model recognizes them as legitimate mechanisms through which communities operationalize Islamic justice objectives.<sup>79</sup> The framework suggests that Indonesian legal system gains strength by recognizing multiple legitimate pathways to achieving Islamic objectives rather than insisting on uniform application of codified rules.<sup>80</sup>

Equal distribution outcomes achieved through *badamai* demonstrate that gender equality and Islamic jurisprudential compliance need not conflict.<sup>81</sup> By implementing inheritance distribution through mechanisms emphasizing contemporary justice understandings, communities can achieve substantively equitable outcomes while maintaining explicit Islamic normative grounding.<sup>82</sup> This transformation challenges assumptions that Islamic law necessarily produces gender hierarchy, showing instead how jurisprudential flexibility enables Islamic frameworks to accommodate contemporary demands for substantive equality.<sup>83</sup>

The justice framework emerging from *badamai* analysis emphasizes substantive rather than formal justice. Formal justice focuses on procedural compliance and rule application; substantive justice examines whether outcomes actually achieve fairness, respect individual dignity, and serve community welfare.<sup>84</sup> Banjar practice prioritizes substantive justice through deliberative mechanisms ensuring that distribution outcomes satisfy particular circumstances and achieve community acceptance.<sup>85</sup> Outcomes achieving family harmony and universal acceptance represent successful justice implementation, regardless of whether distribution follows classical jurisprudential formulas.<sup>86</sup>

The implementation model stresses deliberative decision-making as central mechanism for achieving justice.<sup>87</sup> Rather than justice emerging from judge imposing formal legal rules, this model emphasizes justice emerging from reasoned

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<sup>75</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>76</sup> Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice."

<sup>77</sup> Istiqomah, "Rekonstruksi Hukum Ekonomi Syariah dalam Perspektif Maqashid Al-Shari'ah."

<sup>78</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>79</sup> I. Ngazizah, "Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations."

<sup>80</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>81</sup> Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice."

<sup>82</sup> Alwi, "Renewal of Islamic Inheritance Law in Indonesia: An Examination of Wasatiyyah Theory."

<sup>83</sup> I. Ngazizah, "Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations."

<sup>84</sup> Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice."

<sup>85</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>86</sup> Siti Nur Syifa, "Analysis of Fairness in Inheritance Distribution according to Badamai Customs among the Muslim Banjar Community in South Kalimantan."

<sup>87</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

dialogue where all affected parties voice interests and concerns, discuss options, and work toward consensus.<sup>88</sup> Such deliberative processes generate outcomes perceived as legitimate by participants because they embody their values and address their circumstances, creating justice outcomes more stable than judicially-imposed decisions.<sup>89</sup> The model prioritizes relationship preservation and community solidarity alongside individual inheritance rights, recognizing that families have interests in maintaining connection beyond immediate property distribution.<sup>90</sup>

The Banjar practice generates significant implications for reformulating inheritance law in Indonesia and broader Islamic legal contexts. First, it suggests that formal legal systems should recognize customary inheritance mechanisms as legitimate alternatives achieving Islamic justice objectives, rather than attempting to eliminate or subordinate customary institutions.<sup>91</sup> Indonesian legal framework could formally integrate *badamai* and similar customary mechanisms through legislation explicitly recognizing customary institutions as legitimate venues for inheritance resolution, provided such processes maintain Islamic jurisprudential compliance.<sup>92</sup>

Second, the practice suggests that Islamic courts could adopt deliberative mechanisms emphasizing consensus-building and relationship preservation alongside formal legal procedures.<sup>93</sup> Religious court judges addressing inheritance disputes might facilitate family deliberation toward consensus rather than immediately imposing judicial decisions, utilizing *badamai* principles to generate more acceptable, family-preserving outcomes.<sup>94</sup> This would require training judges in restorative justice principles and deliberative facilitation alongside jurisprudential expertise.<sup>95</sup>

Third, the model suggests that DSN-MUI (National Sharia Council) could issue *fatwa* guidelines clarifying jurisprudential legitimacy of equal inheritance distribution under *maqāṣid al-sharī'ah* framework.<sup>96</sup> Such fatwa would provide clear guidance that equal distribution constitutes permissible Islamic jurisprudential position when justified through *maqāṣid al-sharī'ah* reasoning, enabling communities to implement such distribution with explicit Islamic institutional support.<sup>97</sup> This would require systematic articulation of how equal distribution serves Islamic objectives concerning justice, family welfare, and community harmony.<sup>98</sup>

Fourth, the model suggests developing integrated legal framework recognizing multiple legitimate pathways to implementing Islamic inheritance objectives:

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<sup>88</sup> I. Ngazizah, "Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations."

<sup>89</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>90</sup> Siti Nur Syifa, "Analysis of Fairness in Inheritance Distribution according to Badamai Customs among the Muslim Banjar Community in South Kalimantan."

<sup>91</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>92</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>93</sup> I. Ngazizah, "Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations."

<sup>94</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>95</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>96</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>97</sup> Istiqomah, "Rekonstruksi Hukum Ekonomi Syariah dalam Perspektif Maqashid Al-Shari'ah."

<sup>98</sup> Nurullia Muslim, "Prinsip Dasar Aspek Distribusi dalam Ekonomi Islam: Rekonstruksi Filosofis Berbasis Maqashid al-Shari'ah dan Formulasi Kebijakan Kontemporer."

classical proportional distribution (maintaining Islamic jurisprudential tradition), equal distribution (serving contemporary justice demands), and hybrid approaches (combining traditional and innovative elements based on particular circumstances).<sup>99</sup> This framework would emphasize that legitimacy derives not from uniform application of specific rules but from demonstrated alignment with *maqāsid al-sharī'ah* principles and family consensus.<sup>100</sup> Such legal pluralism would strengthen Islamic law's responsiveness to contemporary Muslim needs while maintaining normative grounding in core Islamic principles.<sup>101</sup>

## Discussion

This research documents that the Banjar *badamai* practice constitutes a legitimate jurisprudential mechanism operationalizing *maqāsid al-sharī'ah* principles through a customary institutional framework.<sup>102</sup> Analysis demonstrates that equal inheritance distribution, while differing from the classical 2:1 male-to-female ratio, aligns robustly with core Islamic objectives of justice, wealth preservation, lineage maintenance, and community welfare.<sup>103</sup> The *Badamai* mechanism reveals that customary deliberative processes can generate justice outcomes that are more stable, family-preserving, and widely acceptable than those of formal judicial procedures, despite achieving identical distribution outcomes.<sup>104</sup> Equal distribution outcomes achieved through community consensus reflect community judgments that such allocation better serves Islamic justice objectives in contemporary contexts than classical proportional systems.<sup>105</sup>

The research demonstrates that Banjar communities maintain sophisticated jurisprudential literacy regarding Islamic law and self-consciously apply Islamic principles in developing customary inheritance mechanisms.<sup>106</sup> Community leaders explicitly reference Quranic provisions, consult Islamic scholars, and explain inheritance distribution in Islamic jurisprudential language, revealing that equal distribution results from deliberate jurisprudential reasoning rather than ignorance of Islamic law.<sup>107</sup> This finding challenges assumptions that customary practices represent a deviation from Islamic law, showing instead how communities synthesize Islamic jurisprudence with contextual knowledge to generate integrated legal frameworks.<sup>108</sup>

The Banjar context requires understanding as a complex Muslim community balancing traditional Islamic jurisprudence with distinctive ethnic identity,

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<sup>99</sup> Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice."

<sup>100</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>101</sup> I. Ngazizah, "Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations."

<sup>102</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>103</sup> Siti Nur Syifa, "Analysis of Fairness in Inheritance Distribution according to Badamai Customs among the Muslim Banjar Community in South Kalimantan."

<sup>104</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>105</sup> Nurullia Muslim, "Prinsip Dasar Aspek Distribusi dalam Ekonomi Islam: Rekonstruksi Filosofis Berbasis Maqashid al-Shari'ah dan Formulasi Kebijakan Kontemporer."

<sup>106</sup> Wahidah Wahidah, "Implementation of Faraidh's Provisions in Hibah Wasiat (A Case in South Banjar Kalimantan)."

<sup>107</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>108</sup> I. Ngazizah, "Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations."

customary institutions, and modern state legal frameworks.<sup>109</sup> Banjarese historically maintained Islamic scholarly traditions while developing distinctive cultural practices influencing legal implementation.<sup>110</sup> The contemporary Banjar community continues to negotiate between formal Islamic law (represented through the Indonesian state's Compilation of Islamic Law), customary law institutions that address inheritance and family matters, and modern legal frameworks governing property and civil relations.<sup>111</sup>

Within Southeast Asian Muslim contexts, the Banjar experience is a significant case of adaptation of Islamic law.<sup>112</sup> Throughout Southeast Asia, Muslim communities demonstrate diverse approaches to inheritance distribution reflecting particular kinship systems, economic structures, and social values.<sup>113</sup> The Banjar equal distribution practice aligns with broader Southeast Asian patterns of integrating customary institutions with Islamic jurisprudence, though Banjar mechanisms demonstrate particularly sophisticated institutional design.<sup>114</sup> Indonesian legal pluralism—recognizing multiple legal systems simultaneously—creates space for communities like Banjar to develop integrated frameworks synthesizing Islamic law, customary practice, and state legal requirements.<sup>115</sup> The practice demonstrates that Islamic law functions most effectively when implemented through institutions rooted in community life rather than imposed uniformly by state authority.<sup>116</sup>

Theoretically, the Banjar practice demonstrates that *maqāṣid al-sharī'ah* functions as dynamic jurisprudential framework enabling legal adaptation while maintaining Islamic normative commitment.<sup>117</sup> Rather than viewing *maqāṣid al-sharī'ah* as a static list of unchanging objectives, the analysis reveals how *maqāṣid al-sharī'ah* theory supports contextual reasoning, permitting modification of specific rules when such modification better serves underlying objectives.<sup>118</sup> Al-Shāṭibī foundational insight—that Islamic law aims fundamentally at human welfare and justice—enables jurisprudential reasoning accommodating diverse implementation mechanisms serving common objectives.<sup>119</sup>

This interpretation positions *fiqh al-aqalliyyāt* (Islamic reasoning for minority/plural contexts) as essential jurisprudential method for contemporary

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<sup>109</sup> Wahidah Wahidah, "Implementation of Faraidh's Provisions in Hibah Wasiat (A Case in South Banjar Kalimantan)."

<sup>110</sup> Wahidah Wahidah, "Implementation of Faraidh's Provisions in Hibah Wasiat (A Case in South Banjar Kalimantan)."

<sup>111</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>112</sup> Arbanur Rasyid, "Contestation of Customary Law and Islamic Law in Inheritance Distribution: A Sociology of Islamic Law Perspective."

<sup>113</sup> Dian Mukhlisa Rahmi Hidayati Al Idrus Ramlah Ramlah, Illy Yanti, Harris Mubarrak, "Flexibility of Womens Inheritance Distribution in Jambi Malay Society: Compromising Islamic and Customary Law," *EL-Usrah : Jurnal Hukum Keluarga*, advance online publication, 2024, <https://doi.org/10.22373/ujhk.v7i1.22038>.

<sup>114</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>115</sup> Miftahuddin, "Comparison of Customary Inheritance and the Compilation of Islamic Law: A Study of Inheritance Distribution in Indonesia."

<sup>116</sup> I. Ngazizah, "Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations."

<sup>117</sup> Nurullia Muslim, "Prinsip Dasar Aspek Distribusi dalam Ekonomi Islam: Rekonstruksi Filosofis Berbasis Maqashid al-Shari'ah dan Formulasi Kebijakan Kontemporer."

<sup>118</sup> Dede Nurwahidah, "Konsep Pemikiran Ekonomi dan Maqashid Syariah Perspektif Imam Al-Syathibi."

<sup>119</sup> Istiqomah, "Rekonstruksi Hukum Ekonomi Syariah dalam Perspektif Maqashid Al-Shari'ah."

Muslim societies navigating multiple legal systems.<sup>120</sup> The Banjar case demonstrates that *fiqh al-aqalliyāt* need not weaken Islamic jurisprudential rigor but rather enables more sophisticated analysis showing how core Islamic principles apply contextually.<sup>121</sup> Communities operating within plural legal frameworks benefit from jurisprudential frameworks recognizing multiple legitimate pathways to achieving Islamic objectives, permitting integration of customary institutions with Islamic principles.<sup>122</sup>

The research reveals that community understanding of inheritance justice emphasizes substantive fairness, family welfare, and relationship preservation alongside formal legal compliance.<sup>123</sup> Banjar community members articulate inheritance justice through language of family harmony, respect for all heirs' dignity, and equitable resource distribution enabling independent family member livelihoods.<sup>124</sup> This community knowledge represents sophisticated moral reasoning regarding justice, grounded in Islamic principles yet articulated through local cultural concepts and practical experience.<sup>125</sup>

Community understanding of Islamic law demonstrates that inheritance justice requires more than mechanical rule application; instead, it demands responsive adaptation addressing particular family circumstances.<sup>126</sup> Interview participants explained that Islamic jurisprudence permits flexibility in inheritance implementation, with community leaders consulting Islamic scholars to confirm that equal distribution constitutes permissible jurisprudential position.<sup>127</sup> This understanding challenges academic assumptions treating customary practices as either ignorant deviations or conscious resistance to Islamic law; instead, community practice represents deliberate synthesis of Islamic jurisprudence with contextual reasoning.<sup>128</sup>

Previous ethnographic and anthropological studies documented Banjar inheritance practices without systematically analyzing jurisprudential legitimacy.<sup>129</sup> This research advances beyond previous documentation by demonstrating systematic alignment between customary practice and *maqāsid al-sharī'ah* framework, showing how equal distribution operationalizes core Islamic objectives.<sup>130</sup> Earlier comparative studies examined Islamic inheritance law

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<sup>120</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>121</sup> Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice."

<sup>122</sup> I. Ngazizah, "Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations."

<sup>123</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>124</sup> Siti Nur Syifa, "Analysis of Fairness in Inheritance Distribution according to Badamai Customs among the Muslim Banjar Community in South Kalimantan."

<sup>125</sup> I. Ngazizah, "Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations."

<sup>126</sup> Wahidah Wahidah, "Implementation of Faraidh's Provisions in Hibah Wasiat (A Case in South Banjar Kalimantan)."

<sup>127</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>128</sup> Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice."

<sup>129</sup> Wahidah Wahidah, "Implementation of Faraidh's Provisions in Hibah Wasiat (A Case in South Banjar Kalimantan)."

<sup>130</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

alongside customary practices as separate, potentially conflicting systems.<sup>131</sup>; this research demonstrates their integration as coherent jurisprudential synthesis.<sup>132</sup>

Unlike previous research treating gender equality and Islamic jurisprudential compliance as potentially contradictory,<sup>133</sup> this analysis shows how *maqāṣid al-sharī'ah* framework enables integration of contemporary gender justice demands with Islamic normative commitments.<sup>134</sup> Prior studies examining restorative justice in conflict resolution addressed criminal or civil disputes; this research extends the analysis of restorative justice to inheritance distribution, revealing how community-based deliberative mechanisms achieve both substantive justice and relationship preservation.<sup>135</sup> The research contributes novel theoretical framework positioning customary institutions not as obstacles to Islamic law but as legitimate mechanisms through which communities operationalize *maqāṣid al-sharī'ah* principles.<sup>136</sup>

Theoretical implications extend understanding of how Islamic law functions as a living jurisprudential system capable of contextual adaptation while maintaining normative integrity.<sup>137</sup> The analysis demonstrates that *maqāṣid al-sharī'ah provides sufficient jurisprudential flexibility, enabling diverse inheritance mechanisms that serve common Islamic justice objectives.*<sup>138</sup> This contributes to broader Islamic legal theory by showing how classical jurisprudential principles support contemporary legal innovation, challenging assumptions that Islamic law is inherently rigid or resistant to change.<sup>139</sup>

Practical implications suggest that Indonesian Islamic courts should recognize and facilitate customary inheritance mechanisms, such as *badamai*, as legitimate avenues for achieving Islamic justice objectives.<sup>140</sup> Rather than requiring formal litigation, courts could recommend or facilitate customary deliberative processes generating more acceptable, family-preserving outcomes.<sup>141</sup> Religious court judges require training in restorative justice principles and deliberative facilitation to effectively support community-based inheritance resolution.<sup>142</sup>

Policy implications recommend that Indonesian government formally integrate customary inheritance institutions into legal framework through legislation explicitly recognizing *badamai* and similar mechanisms as legitimate alternatives achieving Islamic justice objectives.<sup>143</sup> DSN-MUI should issue fatwa guidelines clarifying that equal inheritance distribution constitutes a permissible jurisprudential position under the *maqāṣid al-syarī'ah* framework.<sup>144</sup> National inheritance law reform should recognize multiple legitimate distribution pathways, including the classical

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<sup>131</sup> Miftahuddin, "Comparison of Customary Inheritance and the Compilation of Islamic Law: A Study of Inheritance Distribution in Indonesia."

<sup>132</sup> I. Ngazizah, "Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations."

<sup>133</sup> Alwi, "Renewal of Islamic Inheritance Law in Indonesia: An Examination of Wasatiyyah Theory."

<sup>134</sup> Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice."

<sup>135</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>136</sup> I. Ngazizah, "Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations."

<sup>137</sup> Istiqomah, "Rekonstruksi Hukum Ekonomi Syariah dalam Perspektif Maqashid Al-Shari'ah."

<sup>138</sup> Nurullia Muslim, "Prinsip Dasar Aspek Distribusi dalam Ekonomi Islam: Rekonstruksi Filosofis Berbasis Maqashid al-Shari'ah dan Formulasi Kebijakan Kontemporer."

<sup>139</sup> Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice."

<sup>140</sup> Basri, "Inheritance Distribution in Islamic Family Law: A Juridical Study of the Principle of Gender Justice."

<sup>141</sup> I. Ngazizah, "Inheritance Distribution in Indonesia: Dialectics of Islamic Law and Social Relations."

<sup>142</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>143</sup> Ahmad Sukris Sarmadi, "Negotiating Islamic Law and Customary Practice: Fiqh al-Aqalliyat and Restorative Justice in Banjar Inheritance Disputes."

<sup>144</sup> Istiqomah, "Rekonstruksi Hukum Ekonomi Syariah dalam Perspektif Maqashid Al-Shari'ah."

proportional, equal, and hybrid approaches, provided that distribution maintains Islamic jurisprudential compliance and achieves family consensus.<sup>145</sup> These reforms would strengthen Islamic law's responsiveness to contemporary Muslim needs while maintaining normative grounding in core Islamic principles.<sup>146</sup>

## Conclusion

This study has demonstrated that Islamic inheritance law, when approached through a *maqāsid al-syarī'ah* framework, cannot be reduced to rigid adherence to *farā'id* formulations alone. While classical jurisprudence establishes proportional inheritance rules, this research argues that such rules should be understood as context-bound juristic constructions rather than immutable legal prescriptions. The critical gap addressed in this study lies in the limited theorization of *maqāsid al-syarī'ah* as an autonomous normative framework capable of re-evaluating inheritance principles in light of substantive justice.

Through a systematic normative analysis, this study finds that equal inheritance distribution can be justified within the higher objectives of Islamic law, particularly in relation to justice (*'adl*), public welfare (*maṣlahah*), and the protection of lineage and wealth (*hifz al-nasl* and *hifz al-māl*). This indicates that Islamic legal reasoning possesses inherent flexibility, allowing re-interpretation of classical doctrines when such re-interpretation better fulfills the overarching purposes of the *sharī'ah*. Accordingly, the dominance of rule-based formalism in inheritance law must be critically reconsidered in favor of an objective-oriented approach. The main contribution of this study lies in advancing a theoretical shift from textual rigidity toward *maqāsid*-based reasoning in Islamic inheritance law. By positioning alternative distributive models as normatively legitimate within Islamic jurisprudence, this research challenges the conventional dichotomy between formal law and contextual practice. It further offers a conceptual framework for reconstructing inheritance law that is responsive to contemporary demands for substantive justice while remaining grounded in Islamic legal principles.[]

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