

## Maqashid Syariah Review of Inheritance Distribution Practices from Parents to Children in the Betawi Indigenous Community of Kapuk Village: A Socio-Legal Empirical Study

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Article Info	Abstract
<p><b>Article history:</b> Received: April 17, 2025 Revised: August 11, 2025 Accepted: September 19, 2025</p> <hr/> <p><b>Keywords:</b> Betawi Customary Law, Inheritance Distribution, Legal Pluralism, Maqashid al-Syariah, Socio-Legal Approach.</p> <hr/> <p><b>To cite this article:</b> Abdillah, D. H. &amp; Yusron, M. (2025). Maqashid Syariah Review of Inheritance Distribution Practices from Parents to Children in the Betawi Indigenous Community of Kapuk Village. Sahaja: Journal Sharia and Humanities.</p>	<p>This study examines the inheritance distribution practices among the Betawi indigenous community in Kapuk Village, Cengkareng District, West Jakarta, through the theoretical lens of maqashid al-syariah as articulated by Muhammad al-Tahir ibn Asyur. Employing an empirical legal research design with a socio-legal approach, data were collected through semi-structured interviews with five families of testators and heirs, community leaders, and complemented by secondary sources, including Islamic jurisprudence literature and customary law documents. The findings reveal that inheritance distribution in this community predominantly occurs during the parents' lifetimes through inter vivos transfers (hibah), deviating from the classical faraid system. Parents allocate property based on subjective criteria such as emotional proximity, filial responsibility in eldercare, and residential proximity rather than the Quranic proportional shares. While this practice reflects deeply embedded Betawi cultural values of family-centrism (kekeluargaan) and social harmony (keselamatan), it frequently generates latent disputes due to the absence of formal documentation and witnesses. Nevertheless, through the analytical framework of maqashid al-syariah, this study argues that such practices align with the higher objectives of Islamic law, particularly the principles of maslahah (public benefit), al-musawah (substantive equality), sadd al-dzariah (prevention of harm), and social stability. This study contributes to the discourse on legal pluralism in Muslim-majority societies by demonstrating how indigenous communities negotiate between customary practices and Islamic legal norms through contextual ijtihad.</p>

### A. Introduction

Inheritance constitutes one of the most sensitive and consequential domains within Islamic jurisprudence, as it intersects with fundamental principles of distributive justice, family solidarity, and the preservation of wealth across generations. In Indonesia, the world's most populous Muslim-majority nation, the complexity of inheritance governance is compounded by the coexistence of at least three overlapping legal systems: Islamic inheritance law (faraid), customary law (hukum adat), and state civil law (Adeline & Rahayu, 2023; Rasyid et al., 2024). This legal pluralism generates practical tensions at the community level, where indigenous populations frequently negotiate between religious prescriptions and culturally embedded norms when allocating familial property (Hasanah & Hayati, 2025; Yusmita et al., 2025). The Betawi community of Jakarta, as one of Indonesia's recognized

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indigenous groups, represents a particularly instructive case of this negotiation, given their deep Islamic identity and simultaneously resilient customary practices (Saidi, 2011).

The existing scholarly literature on Islamic inheritance law in Indonesia has predominantly focused on normative-textual analyses of faraid provisions (Djawas et al., 2022), comparative studies between customary and Islamic systems in matrilineal societies such as the Minangkabau (Elfia et al., 2022; Saprina & Rahmi, 2024), and judicial interpretations by Religious Courts regarding gender-equitable inheritance distribution (Heriandita et al., 2025; Kamarusdiana et al., 2025). Several recent studies have examined the contestation between adat and Islamic law in various ethnic communities including the Mandailing (Rasyid et al., 2024), Sasak (Yusmita et al., 2025), and Dayak Ngaju communities employing theoretical frameworks of legal pluralism, living law, and social change (Luntajo & Hasan, 2025). Furthermore, empirical research on habitus and legal behavior in inheritance practices has revealed that non-compliance with faraid is not merely an act of ignorance but constitutes socially embedded responses to structural and normative dissonance (Bilalu et al., 2025). However, despite this growing body of literature, empirical studies examining inheritance practices among the Betawi community through the specific analytical framework of maqashid al-syariah remain notably scarce.

This gap is particularly significant for several reasons. First, the Betawi community's practice of distributing inheritance during the parents' lifetimes through oral agreements (*hibah lisan*) without formal documentation or witnesses presents a distinctive case that differs from the post-mortem distribution paradigm assumed by both faraid and most adat systems studied in the literature. Second, the maqashid al-syariah framework, particularly as developed by Muhammad al-Tahir ibn Asyur, offers a methodological apparatus that transcends the binary of textual compliance versus deviation, enabling a more nuanced evaluation of whether such practices fulfill the higher objectives of Islamic law (Mohammed, 2024; Fauzan & Imawan, 2023). Third, recent scholarship has called for empirical, ground-level studies that illuminate how ordinary Muslim communities, rather than courts or scholars, actually experience and negotiate inheritance law in their daily lives (Nur et al., 2025; Huda, 2024).

Accordingly, this study aims to achieve two objectives. First, it seeks to empirically document and analyze the inheritance distribution practices among Betawi families in Kapuk Village, Cengkareng District, West Jakarta a densely populated urban area with 174,349 residents and the largest Muslim population in West Jakarta at 469,543 persons (BPS Jakarta Barat, 2023; Noval, 2024). Second, it aims to critically evaluate these practices through the lens of Ibn Asyur's maqashid al-syariah theory, specifically examining whether the Betawi inheritance customs fulfill the objectives of *maslahah* (public benefit), *al-musawah* (substantive justice), *sadd al-dzariah* (harm prevention), and social stability.

This study advances the hypothesis that the Betawi community's inheritance practices, while formally deviating from faraid prescriptions, constitute a legitimate form of contextual *ijtihad* that is consistent with the overarching objectives of Islamic law as articulated within the maqashid framework. This article is structured as follows: the next section describes the research methodology; the subsequent sections present the findings on inheritance practices and the maqashid al-syariah theoretical framework; a discussion integrates the empirical findings with the theoretical analysis; and concludes with implications and recommendations.

## B. Methods

This study employs an empirical legal research design with a socio-legal approach, which enables the examination of law as it operates in practice rather than merely as it is codified in texts (Muhaimin, 2020). The socio-legal approach is particularly appropriate for this study because it facilitates the analysis of how the Betawi community negotiates between Islamic legal norms and customary practices in the domain of inheritance distribution in an inherently pluralistic legal environment (Sani, 2020; Hooker, 2015).

The research was conducted in Kapuk Village, Cengkareng District, West Jakarta, between March and November 2024. This location was purposively selected based on three criteria: its status as the most densely populated *kelurahan* in West Jakarta, with a predominantly Muslim Betawi

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population; the documented prevalence of customary inheritance practices that deviate from formal faraid; and the accessibility of community leaders willing to facilitate research access. The research population comprised Betawi families who had experienced inter vivos inheritance, with the unit of analysis the family-level inheritance event.

Data collection employed triangulated methods. Primary data were gathered through semi-structured in-depth interviews with fifteen informants comprising five testators or surviving spouses, five heirs (adult children), and five community leaders, including the Head of RW 14 and recognized local religious figures. The interview protocol was designed to elicit narratives on three dimensions: the procedural aspects of inheritance distribution (timing, method, documentation), the substantive criteria guiding allocation decisions (proportionality, need-based, gender-based), and the perceived outcomes and conflicts arising from these practices. Secondary data were obtained from relevant Islamic jurisprudence literature, customary law documents, and statistical publications from BPS Jakarta Barat.

Data analysis proceeded through three sequential stages following the Miles and Huberman framework: data reduction (coding and categorizing interview transcripts according to thematic nodes), data display (constructing narrative matrices linking empirical findings to maqashid al-syariah principles), and conclusion drawing and verification through constant comparison with theoretical propositions and existing literature. The analytical framework centered on Ibn Asyur's four-dimensional maqashid al-syariah classification, *maslahah*, *al-musawah*, *sadd al-dzariah*, and social stability, which served as deductive codes against which the inductive themes from empirical data were mapped. Ethical considerations were upheld throughout the research process; informed consent was obtained from all participants, and pseudonyms or initials are used to protect informant identities. The researcher maintained cultural sensitivity by acknowledging the Betawi community's socio-religious context and conducting interviews in culturally appropriate settings.

### C. Result

#### **Inheritance Distribution Practices in the Betawi Community of Kapuk Village**

The empirical investigation revealed a consistent pattern in the distribution of inheritance among the five Betawi families studied in Kapuk Village. All families practiced inter vivos property transfer (*hibah*) during the parents' lifetimes, rather than post-mortem distribution as prescribed by the classical faraid system. This finding is consistent with the broader Betawi cultural principle of "mencari keselamatan" (seeking safety and social harmony), which prioritizes avoiding conflict and maintaining familial cohesion (Saidi, 2011). The community's cultural aversion to judicial processes is also noteworthy; as articulated by the local community leader, Betawi parents traditionally instill the value of "jangan melanggar hukum" (do not break the law), which paradoxically manifests as reluctance to engage with formal legal institutions for inheritance resolution (Manan, 2018).

In the case of the family of Ibu Hj. A, an elderly matriarch with eleven children, had her inheritance distributed by her late husband during his lifetime. Land and houses were allocated to individual children upon their marriage, without formal documentation or the presence of witnesses. While initially harmonious, the arrangement became contentious after the husband's death, when three of the children disputed the disproportionate allocation to the youngest child. However, the majority of heirs declined to pursue redistribution, citing respect for the youngest child's sacrifices in providing eldercare. This case illustrates the tension between perceived procedural injustice and substantive acceptance grounded in reciprocity norms.

The family of Almarhum H. M presents a contrasting scenario in which the testator distributed land certificates directly to each child during his illness preceding death. This approach introduced a degree of legal transparency by providing documentary evidence of the transfer of ownership. Despite one heir's dissatisfaction with the allocation, the existence of formal documentation minimized the scope for dispute. In the family of Almarhum H. H, who passed away in 2022, the distribution of land parcels was conducted progressively as each child married and required residential land. The children

accepted variations in land area, prioritizing family harmony and expressing gratitude for what they received.

The family of Almarhum H. ZA adopted a hybrid approach: Rp500,000,000 in cash was designated for post-mortem distribution, while land of varying sizes was allocated during the testator's lifetime. The heirs' financial independence, who had already received assistance with house construction, precluded disputes. Finally, the family of Almarhumah IH distributed land among seven children based on pragmatic considerations of workplace proximity, with the second child receiving the primary family home and rental properties as recognition of eldercare contributions.

Across all five cases, several cross-cutting patterns emerge. First, inheritance is distributed during the parents' lifetimes rather than post-mortem. Second, allocation criteria are predominantly need-based and relational factoring in eldercare contributions, emotional proximity, and economic need rather than adhering to the fixed proportional shares of faraid. Third, oral communication is the primary mode of distribution, with only one family employing formal documentation. Fourth, gender-differentiated shares (the 2:1 male-to-female ratio prescribed by faraid) are not systematically applied. Fifth, while latent dissatisfaction exists in some families, overt conflict is generally contained through shared cultural values of *kekeluargaan* (familial solidarity) and acceptance.

### **Ibn Asyur's Maqashid al-Syariah Framework**

Muhammad al-Tahir ibn Asyur (1879–1973) significantly expanded the theory of maqashid al-syariah beyond the foundational formulations of al-Syatibi. His methodology, grounded in *istiqla* (inductive analysis) of Quranic texts and Prophetic traditions, sought to identify the *ratio legis* (*illat*) underpinning legal rulings to ensure their continued relevance across changing temporal, spatial, and social conditions (Ni'ami & Bustami, 2021; Mohammed, 2024). Ibn Asyur classified maqashid into two principal categories: maqashid ammah (general objectives) encompassing the universal aims of the Syariah applicable across all legal domains, and maqashid khassah (specific objectives) pertaining to particular areas of muamalat (civil transactions), including family law, commercial law, and criminal law (Indra, 2016; Fauzan & Imawan, 2023).

Within the maqashid ammah framework, Ibn Asyur identified several foundational principles: *maslahah* (benefit and welfare), *al-musawah* (equality and justice), *sadd al-dzariah* (blocking the means to harm), and social stability and resilience. Regarding *maslahah*, Ibn Asyur defined it as an attribute of actions that consistently or predominantly produce goodness whether for the collective or the individual (Taufiq, 2022; Sutisna et al., 2021). He further classified *maslahah* into three hierarchical tiers: *al-maslahah al-dharuriyyah* (essential or primary interests encompassing the protection of religion, life, intellect, lineage, and property), *al-maslahah al-hajjiyyah* (complementary interests facilitating ease and convenience), and *al-maslahah al-tahsiniyyah* (embellishing interests enhancing dignity and refinement).

Ibn Asyur established four conditions for identifying valid maqashid ammah: permanence (*al-thubut*) the objective must be stable and enduring; clarity (*al-dhuhur*) it must be unambiguous in meaning; precision (*al-indhibit*) it must have specific, measurable parameters; and universality (*al-ithrad*) it must be applicable regardless of regional, ethnic, or temporal variations (Fauzan & Imawan, 2023). Within the specific domain of family and inheritance law (maqashid khassah), Ibn Asyur emphasized that the overarching purpose is to regulate the equitable utilization of resources created by God for humanity while establishing safeguards against harm arising from competing interests in resource utilization (Indra, 2016; Mura, 2023).

### **D. Discussion**

The empirical findings from Kapuk Village illuminate a complex legal-cultural landscape in which the Betawi community's inheritance practices represent neither wholesale rejection of Islamic law nor passive compliance with customary norms, but rather an active process of negotiated adaptation. This section systematically evaluates these practices through the four dimensions of Ibn Asyur's maqashid al-syariah framework, while situating the analysis within the broader scholarly discourse on legal pluralism and Islamic inheritance reform in Indonesia.

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### **Maslahah (Public Benefit) and Inter Vivos Inheritance Distribution**

The predominant practice of distributing inheritance during the parents' lifetime can be evaluated against Ibn Asyur's conception of *maslahah* as an attribute of actions that consistently produce goodness for both collective and individual interests. In the Betawi community context, this practice demonstrates alignment with *maslahah* on multiple levels. At the *al-dharuriyyah* (essential) level, the practice directly serves *hifz al-mal* (protection of property) by establishing *de facto*—and in some cases, *de jure* property ownership during the testator's lifetime, thereby reducing the risk of asset dissipation, fraudulent claims, or intestacy complications that could arise from post-mortem distribution without adequate documentation. The case of Almarhum H. M, who distributed land certificates before death, exemplifies how documentary transfers during life provide greater legal certainty than oral post-mortem arrangements.

At the *al-hajiyah* (complementary) level, *inter vivos* distribution alleviates the practical hardships associated with post-mortem inheritance proceedings, which in the Indonesian context may involve protracted Religious Court litigation, costly legal representation, and emotionally taxing family negotiations (Hasan, 2023; Maimanah et al., 2024). The Betawi families' preference for informal distribution thus serves as a pragmatic harm-reduction strategy. This finding resonates with recent empirical studies demonstrating that *hibah*-based inheritance distribution is increasingly recognized as a legitimate preventive mechanism against inheritance disputes across various Indonesian Muslim communities (Bilalu et al., 2025; Damayanti, 2019).

However, the analysis must also account for the potential *maslahah* deficit created by the absence of formal documentation in most cases. As Ibn Asyur cautioned, *maslahah* assessment requires weighing the balance between benefit and harm; a practice that produces immediate benefit but generates long-term risks cannot be uncritically endorsed. The case of Ibu Hj. A's family, where post-mortem disputes arose precisely because of oral distribution without witnesses, illustrates this tension. This suggests that while the principle of *inter vivos* distribution is *maslahah*-compliant, the absence of procedural safeguards (documentation, witnesses, formal agreement) constitutes a gap that could be addressed through institutional reform without abandoning the underlying customary logic.

### **Al-Musawah (Substantive Equality) and Allocation Criteria**

Ibn Asyur's conception of *al-musawah* transcends formal equality to encompass *al-adl* (justice) as a composite value incorporating honesty, balance, proportionality, and fairness. This nuanced understanding is analytically valuable for evaluating Betawi inheritance practices, which distribute property based on relational and need-based criteria rather than on fixed proportional shares. The allocation of larger shares to children who provide eldercare is observed in Ibu Hj. A's family. A, Almarhum H. H, and Almarhumah IH can be interpreted as an application of substantive justice that recognizes unequal contributions and compensates accordingly. This is analogous to Ibn Asyur's acknowledgment that certain *awaridh maniah* (impediments to equality) may justify differential treatment when grounded in legitimate social, economic, or familial considerations (Ni'ami & Bustami, 2021).

Recent judicial developments in Indonesia's Religious Courts corroborate this interpretation. Several court decisions have sanctioned equal inheritance distribution (1:1) between male and female heirs—departing from the textual 2:1 ratio based on *maqashid*-informed reasoning about contemporary women's economic roles and contributions to family welfare (Heriandita et al., 2025; Kamarusdiana et al., 2025). The Betawi community's practices, while extra-judicial, operate within a similar logic of contextual justice. Nevertheless, the risk of arbitrary allocation, in which parental bias rather than legitimate need determines distribution, must be acknowledged as a potential violation of *al-musawah*, particularly when some heirs are excluded from the deliberation process.

### **Sadd al-Dzariah (Harm Prevention) and Conflict Avoidance**

The principle of *sadd al-dzariah*, which blocks the means to harm, provides a compelling justification for the Betawi community's proactive inheritance distribution. Ibn Asyur outlined three prerequisites for invoking this principle: the assessment must weigh *maslahah* against *mafsadah*

(harm); the degree of need and risk potential must be considered; and equivalent alternatives should be explored before prohibition (Indra, 2016). In the inheritance context, distributing property during the parents' lifetimes serves as a preventive mechanism against the documented harms of post-mortem inheritance disputes, including familial disintegration, protracted litigation, and economic hardship for vulnerable heirs. Research on delayed inheritance distribution in Indonesian Muslim communities has consistently identified such delays as sources of escalating conflict, particularly when complicated by competing legal frameworks and the absence of clear documentation (Rasyid et al., 2024; Ilyas et al., 2023).

The case of Almarhum H. M's family exemplifies effective harm prevention: by distributing land certificates before death, the testator ensured documentary clarity that precluded the typical evidentiary disputes associated with oral inheritance arrangements. Conversely, the experience of Ibu Hj. A's family demonstrates that the *sadd al-dzariah* logic is only partially fulfilled when procedural safeguards are absent: oral distribution without witnesses creates the very ambiguity that the practice ostensibly seeks to prevent. This finding underscores the need for what recent scholarship has termed "accountable pluralism" – a model that maintains the flexibility of customary practices while introducing structured mediation, documentation protocols, and ethical education to sustain fairness (Nur et al., 2025).

### **Social Stability and Community Cohesion**

Ibn Asyur emphasized that the ultimate purpose of Islamic law is to establish a robust and stable social order (*nidham al-ummah*) by realizing collective welfare and preventing communal harm. The Betawi inheritance practices demonstrably serve this objective through several mechanisms. First, the cultural principle of *keselamatan* functions as a social regulation mechanism that incentivizes consensual dispute resolution over adversarial litigation, thereby preserving communal bonds. Second, the practice of allocating resources based on familial consensus, however informal, reinforces the Betawi emphasis on *musyawarah* (deliberation) as a governance principle. Third, the non-application of gender-differentiated shares in several families, particularly in the case of Almarhum H. ZA, where cash was distributed equally regardless of gender, reflects an adaptive interpretation of justice that responds to contemporary social dynamics where women increasingly contribute to family economic welfare (Harnides et al., 2023).

This finding is consistent with the broader pattern observed across Indonesian Muslim communities, where social stability and family harmony frequently take precedence over strict textual adherence in inheritance matters. Comparative studies among the Minangkabau (Elfia et al., 2022), Aceh (Ilyas et al., 2023), Sasak (Yusmita et al., 2025), and Borneo communities (Hasan et al., 2024) have documented similar negotiated outcomes that privilege communal cohesion over formalistic compliance. The Betawi case adds to this literature by demonstrating that even in an urban setting where one might expect greater exposure to formal legal institutions, customary inheritance norms retain significant social efficacy.

### **Toward a Maqashid-Informed Model of Inheritance Reform**

Synthesizing the foregoing analysis, this study proposes that Betawi inheritance practices constitute a form of contextual *ijtihad* legal reasoning responsive to specific socio-cultural conditions, broadly consistent with the *maqashid al-syariah* framework. However, this endorsement is qualified: the absence of procedural safeguards represents a significant vulnerability that undermines the full realization of *maqashid* objectives. Drawing on Ibn Asyur's conditions for valid *maqashid* permanence, clarity, precision, and universality, the study identifies an inherent tension between the adaptability of customary practices and the requirement for clear, measurable standards that protect all stakeholders' interests.

This finding has implications for the broader discourse on Islamic legal reform in plural societies. Rather than advocating for the wholesale replacement of customary practices with *faraid* compliance or, conversely, endorsing uncritical cultural relativism, the *maqashid* framework offers a middle path: preserving the substantive justice orientation of customary practices while introducing

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procedural accountability. Specifically, this could involve community-level interventions such as structured family deliberation forums facilitated by religious and adat leaders, documentation templates for inter vivos property transfers, and educational programs on both Islamic inheritance principles and legal literacy. Such a model aligns with what scholars have termed “functional legal pluralism,” a configuration in which multiple legal orders coexist and interact productively, each contributing distinct normative resources to the resolution of social problems (Sani, 2020; Hooker, 2015).

## E. Conclusion

This study has documented and analyzed the inheritance distribution practices in the Betawi indigenous community of Kapuk Village through the theoretical framework of Ibn Asyur’s maqashid al-syariah. The empirical findings reveal that Betawi families predominantly employ inter vivos property transfer (*hibah*) based on relational criteria, including eldercare contributions, emotional proximity, and economic need, rather than the proportional shares prescribed by *faraid*. These practices are deeply embedded in the cultural values of *kekeluargaan* and *keselamatan*, serving as community-level strategies for conflict prevention and social cohesion.

Through the maqashid al-syariah analysis, this study concludes that the Betawi inheritance practices substantially align with the higher objectives of Islamic law, particularly *maslahah*, *al-musawah*, *sadd al-dzariah*, and social stability, despite their formal deviation from *faraid* prescriptions. However, the prevalence of oral, undocumented distribution creates procedural vulnerabilities that partially undermine these maqashid achievements. The study therefore advances two key contributions: theoretically, it demonstrates the analytical utility of the maqashid framework for evaluating customary legal practices in plural societies, enriching the discourse on legal pluralism in Muslim-majority contexts; practically, it recommends a model of “accountable pluralism” that preserves the substantive justice orientation of Betawi customs while introducing documentation protocols, structured family deliberation, and legal literacy education.

The limitations of this study include its geographic specificity to one *kelurahan* in West Jakarta, which constrains the generalizability of findings to other Betawi communities or Indonesian indigenous groups. Future research should employ comparative designs examining inheritance practices across multiple Betawi sub-communities, incorporate quantitative measures of dispute incidence and resolution outcomes, and explore the role of digital documentation technologies in bridging customary practices with formal legal requirements.

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